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JAMES D. MAHER

IN THE
Supreme Court of the United States.

October Term, 1920
No. 199

CHARLES E. SMITH,

Appellant,

against

KANSAS CITY TITLE & TRUST COMPANY, FEDERAL
LAND BANK OF WICHITA, KANSAS, AND FIRST
JOINT STOCK LAND BANK OF CHICAGO, ILLINOIS,

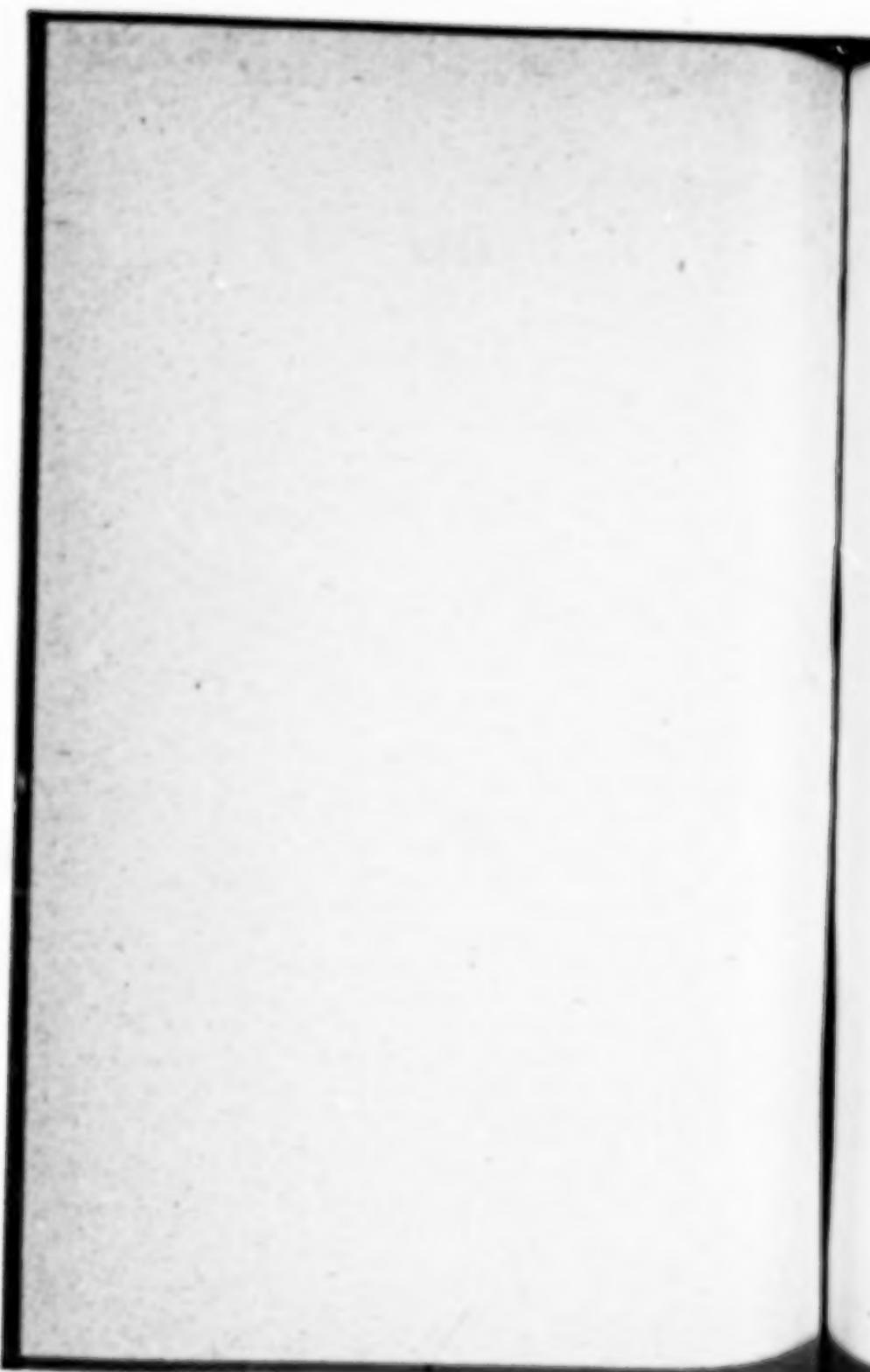
Appellees.

SUPPLEMENTAL BRIEF FOR APPELLEE,
FEDERAL LAND BANK OF WICHITA, KANSAS,
ON REARGUMENT.

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Appellees.

SUPPLEMENTAL BRIEF FOR APPELLEE, FEDERAL LAND BANK OF WICHITA, KANSAS, ON REARGUMENT.

We assume it to be unnecessary to restate the proceedings below which resulted in a decree of the District Court dismissing the bill. The question involved is the constitutionality of the Federal Farm Loan Act which the bill assails in its entirety.

This brief is presented on behalf of the Federal Land Banks.

Analysis of the Federal Farm Loan Act.

The provisions of the Federal Farm Loan Act of July 17, 1916, c. 245 (39 Stat. 360) as amended by the Act of January 18, 1918, c. 9 (40 Stat. 431), so far as they relate to the Federal Land Banks and are pertinent to the questions here involved may be succinctly described as follows:

The Federal Farm Loan Board.

The Federal Land Banks are Federal corporations organized by the Federal Farm Loan Board (sec. 4). This Board consists of five members, including the Secretary of the Treasury and four members appointed by the President by and with the advice and consent of the Senate, one of whom is designated by the President as the Farm Loan Commissioner and is the active executive officer of the Board. It has general supervision of the Federal Farm Loan Bureau, which is established in the Treasury Department (sec. 3).

Organization of Federal Land Banks.

It was made the duty of the Federal Farm Loan Board to divide continental United States, excluding Alaska, into twelve districts and to establish a Federal Land Bank in each district. The mode of organization was prescribed as follows: The Federal Farm Loan Board was to appoint five directors, for the purpose of temporary management. These directors were to make an "organization certificate," on the filing of which the Federal Land Bank was to become a body corporate (sec. 4). Each Federal Land Bank must have, before beginning business, a subscribed

capital of not less than \$750,000. The capital stock was to be divided into shares of \$5 each and might be subscribed for and held by any individual, firm or corporation or by the Government of any State or of the United States. If within thirty days after the subscription books were opened any part of the minimum capital of \$750,000 remained unsubscribed, the Secretary of the Treasury was required to subscribe the remainder on behalf of the United States, and to pay for the shares out of any moneys in the Treasury not otherwise appropriated.

Thereafter, there were to be subscriptions for stock by cooperative associations, known as National Farm Loan Associations, in connection with mortgage loans (secs. 4, 5). The subscriptions for stock by these associations are to be to the amount of five percent of the loans and such stock is to be retired when the loans are paid off (sec. 7). The effect is that any profits made and distributed are to go against the loans.

Stock owned by the United States is not to receive dividends, but all other stock is to share in dividend distributions without preference. Each National Farm Loan Association and the Government of the United States are entitled to one vote for each share of stock and no other shareholder can vote (sec. 5).

National Farm Loan Associations.

National Farm Loan Associations are also Federal corporations which may be organized by persons desiring to borrow money on farm mortgage security. If the Federal Land Bank so recommends, the Federal Farm Loan Board may grant a charter to the applicants designating the terri-

tory in which such Association may make loans (sec. 7). Shares in these Associations are to be of the par value of \$5 each, and no persons but borrowers on farm land mortgages are to be shareholders; such borrowers are to take stock to the amount of five percent of their loans (sec. 8). Whenever any Association desires to secure for a member a loan on first mortgage from the Federal Land Bank of its district, it must subscribe for capital stock of that Land Bank to the amount of five percent of the loan. This stock must be paid off and retired upon full payment of the mortgage loan, and whenever it is retired the Association is to retire the corresponding shares of its stock (sec. 7). Among the described powers of National Farm Loan Associations may be noted the power "to indorse, and thereby become liable for the payment of, mortgages taken from its shareholders by the Federal Land Bank of its district"; and also the power "to issue certificates against deposits of current funds bearing interest for not longer than one year at not to exceed four per centum per annum after six days from date, convertible into farm loan bonds when presented at the Federal Land Bank of the district in the amount of \$25 or any multiple thereof." Such deposits, when received, are to be forthwith transmitted to such Land Bank and be invested by it in the purchase of farm loan bonds issued by a Federal Land Bank or in first mortgages as defined by the Act (sec. 11).

Permanent Organization of Federal Land Banks.

After subscriptions to stock in any Federal Land Bank by National Farm Loan Associations reach the sum of \$100,000, the permanent officers

and directors of the Land Bank are to take over its management from the temporary officers and directors first designated. The Board of Directors thus constituted is to consist of nine members, six of whom are to be chosen by National Farm Loan Associations, and the remaining three directors are to be appointed by the Federal Farm Loan Board (sec. 4). After subscriptions to the capital stock of any Land Bank by National Farm Loan Associations amount to \$750,000, the bank must apply semi-annually to the payment and retirement of the shares which were issued upon subscriptions to the original capital twenty-five percent of all sums thereafter subscribed to capital stock until the original capital stock is retired at par. At least twenty-five percent of that part of the capital of any Federal Land Bank of which stock is outstanding in the name of National Farm Loan Associations must be held in quick assets and may consist of cash in the vaults of the Land Bank, or in deposits in member banks of the Federal Reserve System, or in readily marketable securities approved under rules of the Federal Farm Loan Board, provided that not less than five percent of such capital shall be invested in United States Government bonds (sec. 5).

Amendment of Act providing for continuance of temporary organization of Federal Land Banks.

By the amendment of January 18, 1918 (40 Stat. 431), the Secretary of the Treasury was authorized in his discretion, upon the request of the Federal Farm Loan Board from time to time during the fiscal years ending June 30, 1918, and June 30, 1919, respectively, to use any funds in the Treasury not otherwise appropriated in the purchase at

par and accrued interest from any Federal Land Bank of Farm Loan Bonds issued by such bank. Such purchases were not to exceed \$100,000,000 in either of the fiscal years specified.

It was then provided that the temporary organization of any Federal Land Bank as provided in section 4 of the Federal Farm Loan Act should be continued so long as any Farm Loan Bonds purchased from it under the provisions of the amendment should be held by the Treasury, and until the subscriptions to stock in such bank by National Farm Loan Associations should equal the amount of stock held in such bank by the Government of the United States.

Restriction upon mortgage loans made by Federal Land Banks.

The mortgage loans by the Federal Land Banks are carefully restricted so as to be made only to actual cultivators of the soil and thus to promote agricultural development in a systematic manner throughout the country. They can be made only for the purpose of purchasing farm lands and equipment, and for improvements, or for liquidating existing indebtedness as stated. They are to be made to cultivators of the land mortgaged in an amount not above \$10,000 and at a rate of interest not exceeding six percent per annum. The interest rate is to be the rate in the last series of farm loan bonds issued by the Land Bank making the loan with not more than one per cent added to cover administration expenses and profits (sec. 12).

General powers of Federal Land Banks.

Each Federal Land Bank is empowered to issue,

subject to the approval of the Federal Farm Loan Board, and to buy and sell farm loan bonds authorized in the Act; to invest its funds in the purchase of qualified first mortgages on farm lands within its district; to hypothecate mortgages with the Farm Loan Registrar of the district (an officer appointed by the Federal Farm Loan Board) as security for farm loan bonds; to acquire and dispose of property necessary or convenient for the transaction of its business, and parcels of land acquired in satisfaction of debts or at judicial sales; to deposit its securities and its current funds subject to check with any member bank of the Federal Reserve System and to receive interest thereon; to accept deposits of securities or of current funds from national Farm Loan Associations holding its shares but to pay no interest on such deposits; to borrow money, to give security therefor, and to pay interest thereon; to buy and sell United States bonds; and to charge applicants for loans, under regulations of the Federal Farm Loan Board, reasonable fees not exceeding actual cost of appraisal and determination of title (sec. 13). The Act provides that no Federal Land Bank shall have power "to accept deposits of current funds payable upon demand except from its own stockholders, or to transact any banking or other business not expressly authorized" by the Act; to loan on first mortgage except through National Farm Loan Associations or through described agents employed in localities where Associations have not been formed; to accept any mortgages on real estate except first mortgages made as provided in the Act and those taken as additional security for existing loans; to issue or obligate itself for outstanding farm loan bonds in excess of twenty times the amount of its capital and surplus,

or to receive from any National Farm Loan Association additional mortgages when the unpaid principal upon existing mortgages received therefrom exceeds twenty times the amount of its capital stock owned by such Association; or to demand or receive any commission or charge not specifically authorized in the Act (sec. 14). The by-laws of Federal Land Banks, regulating the conduct of business, are subject to the supervision of the Federal Farm Loan Board (sec. 4).

Every Federal Land Bank must carry semi-annually to reserve twenty-five percent of its net earnings until the reserve account shall show a credit balance equal to twenty percent of the outstanding capital stock of the bank, and thereafter is to carry to reserve account five percent of its net earnings annually. The reserves of Federal Land Banks are to be invested in accordance with the rules prescribed by the Federal Farm Loan Board (sec. 23). Upon default of any obligation, Federal Land Banks may be declared insolvent and placed in the hands of a Receiver by the Federal Farm Loan Board for the purpose of liquidation. This Board may also appoint a Receiver of any National Farm Loan Association where such Association shall have been in default for a period of two years or its total amount of defaults, as specified, shall amount to at least \$150,000 in the Federal Land Bank district. The Receiver may take possession of the assets of such Associations or of Federal Land Banks and may in the course of liquidation sell all their real and personal property on such terms as the Federal Farm Loan Board or a court of competent jurisdiction may direct. No National Farm Loan Association or Federal Land Bank may go into voluntary liquidation without the consent of the Board (sec. 29).

Farm Loan Bonds.

Farm loan bonds may be issued by any Federal Land Bank with the approval of the Federal Farm Loan Board (see. 18), in denominations of \$25, \$50, \$100, \$500, and \$1000, and are to run for specified minimum and maximum periods subject to payment and retirement at the option of the Land Bank at any time after five years from date of issue. Interest coupons are to be payable semi-annually and bonds are to be issued in series of not less than \$50,000, the amount and terms to be fixed by the Federal Farm Loan Board, and at a rate of interest not to exceed five percent per annum. The Secretary of the Treasury is authorized to prepare suitable bonds in such form, subject to the provisions of the Act, as the Federal Farm Loan Board may approve. The expenses of the preparation, custody and delivery of the bonds are to be paid by the Secretary of the Treasury out of any moneys not otherwise appropriated, and reimbursement is to be effected through proportionate assessments on farm land banks. The bonds may be exchanged into registered bonds of any amount and re-exchanged into coupon bonds at the option of the holder under rules prescribed by the Board (see. 20).

On application by any Federal Land Bank to the Federal Farm Loan Board for approval of an issue of bonds, the Federal Land Bank must tender to the Farm Loan Registrar of the district as collateral security first mortgages on farm lands qualified under the Act, or United States Government bonds, not less in aggregate than the amount of the proposed issue. The Federal Farm Loan Board, upon investigation and appraisement, may grant or reject the application in whole or in part (see. 18).

Every Federal Land Bank issuing such bonds is to be primarily liable therefor, and is also to be liable, upon presentation of coupons, for interest payments due upon any farm loan bonds issued by other Federal Land Banks and remaining unpaid in consequence of their default; and every such bank is likewise to be liable for such portion of the principal of farm loan bonds issued by other Federal Land Banks as shall not be paid after their assets shall have been liquidated and distributed, provided that such losses either of interest or of principal shall be assessed by the Federal Farm Loan Board against solvent Land Banks liable therefor in proportion to the amount of farm loan bonds which each may have outstanding (sec. 21).

Every farm loan bond issued by a Federal Land Bank must contain on its face "a certificate signed by the Farm Loan Commissioner to the effect that it is issued under the authority of the Federal Farm Loan Act, has the approval in form and issue of the Federal Farm Loan Board, and is legal and regular in all respects; that it is not taxable by National, State, municipal, or local authority; that it is issued against collateral security of United States Government bonds, or endorsed first mortgages on farm lands, at least equal in amount to the bonds issued; and that all Federal Land Banks are liable for the payment of each bond" (sec. 21). It is provided that farm loan bonds shall be "a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits." They may be bought and sold by any member bank of the Federal Reserve System, and any Federal Reserve Bank may buy and sell farm loan bonds to the same extent and on the same limitations as are

provided in the case of State, county, district and municipal bonds (sec. 27).

The Act provides for the amortization of loans, and all amortization or other payments on the principal of mortgages securing farm loan bonds are to constitute a trust fund in the hands of the Federal Land Bank to be applied (a) to pay off farm loan bonds issued by said bank as they mature; (b) to purchase at or below par farm loan bonds issued by said bank or by any other Federal Land Bank; (c) to loan on qualified first mortgages on farm lands within the bank district, and (d) to purchase United States Government bonds (sec. 22).

Federal Land Banks as depositaries and fiscal agents of the Government.

All Federal Land Banks, when designated for that purpose by the Secretary of the Treasury, are to be depositaries of public money, except receipts from customs, under regulations prescribed by the Secretary. They may also be employed as financial agents of the Government; and they must perform all such reasonable duties in these capacities as may be required of them. The Secretary of the Treasury must require from the banks thus designated satisfactory security by the deposit of United States bonds or otherwise for the faithful performance of their duties. No Government funds deposited with the banks under this provision are to be invested in mortgage loans or farm loan bonds (sec. 6).

The Secretary of the Treasury is also authorized in his discretion upon the request of the Federal Farm Loan Board to make deposits for the temporary use of any Federal Land Bank out of

any money in the Treasury not otherwise appropriated. The Federal Land Bank must issue therefor a certificate of indebtedness at a rate of interest not to exceed the current rate charged for other Government deposits to be secured by farm loan bonds or other collateral to the satisfaction of the Secretary of the Treasury. Any such certificate is to be redeemed and paid by the Land Bank at the discretion of the Secretary of the Treasury, and the aggregate of all sums so deposited is not to exceed \$6,000,000 at any one time (sec. 32).

Exemption from Taxation.

The Act further provides that every Federal Land Bank and every National Farm Loan Association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal and local taxation, except taxes upon real estate held, purchased, or taken by said Bank or Association under the provisions of the Act.

Farm Loan Bonds issued under the Act, as well as first mortgages executed to Federal Land Banks, are to "be deemed and held to be instrumentalities of the Government of the United States," and as such they and the income derived therefrom are to be exempt from Federal, State, municipal and local taxation. Real estate of such Banks or Associations is to remain subject to State, county or municipal taxes to the same extent, according to its value, as other real property is taxed (sec. 26).

The provisions of the Act relating to Joint Stock Land Banks are omitted, as these provisions will be presented by counsel for those banks.

The Organization of Federal Land Banks under the Act, the issue of Farm Loan Bonds and Activities of these Banks on behalf of the Government.

The bill as amended sets forth the facts. The continental United States excluding Alaska was divided, as provided in the Act, into twelve Federal Land Bank Districts, in each of which a Federal Land Bank has been established by the Federal Farm Loan Board (Transcript of Record, p. 3). Under the provisions of section 5 of the Act, the Secretary of the Treasury invested in the capital stock of these Federal Land Banks public funds to the amount of \$8,892,130. That is, of the \$9,000,000 required under the Act as the total initial capital of the twelve Federal Land Banks (\$750,000 each) the Government took stock to the amount of \$8,892,130. On July 1, 1919, the Secretary of the Treasury was still the holder, on behalf of the United States, of \$8,265,809 in par value (*id.* p. 9). On August 31, 1920, the capital stock held by the Government amounted to \$6,832,680.

These Federal Land Banks have taken from the owners of farm lands a large amount of mortgage notes and have made loans to the respective borrowers payable in installments extending over thirty-six years. After depositing these mortgages and notes with the Farm Land Registrar of the district (a federal official appointed by the Federal Farm Loan Board) the Federal Land Banks have issued Farm Loan Bonds and large amounts of these bonds have been sold to investors throughout the country (*id.* pp. 3, 4). Every Farm Loan Bond thus issued contains on its face a certificate, under section 21 of the Act, that it is

issued under the authority of the Federal Farm Loan Board, has the approval in form and issue of that Board, is legal and regular in all respects and that it is not taxable by national, state, municipal or local authority.

Up to September 30, 1919, the Federal Land Banks had issued Farm Loan bonds under the Act to the amount of \$285,600,000. It appears by the official statement of the Treasury Department, Federal Farm Loan Bureau, that to August 31, 1920, there were Farm Loan bonds authorized for issue by the Federal Land Banks amounting to \$331,350,000. Under Section 32 of the Act as amended on January 18, 1918, the Secretary of the Treasury purchased Farm Loan bonds issued by the Federal Land Banks to the amount of \$149,775,000, of which about \$135,000,000 were held in the Treasury of the United States on September 30, 1919. It is understood that on August 31, 1920, about \$175,000,000 of these bonds were in the Treasury. Over \$150,000,000 of the Farm Loan Bonds issued by the Federal Land Banks are held by the public.

4,000 National Farm Loan Associations have been chartered under the provisions of the Act by the Federal Farm Loan Board (sec. 7) and 2,000 of these Associations have begun the creation of reserves.

The Federal Land Banks on September 30, 1919, were the owners of United States bonds to the amount of \$4,230,805. On August 31, 1920, their holdings of United States bonds and securities amounted to \$7,583,227.77. The Federal Land Banks then had United States Government deposits to the amount of \$5,950,000.

During the summer of 1918, the Federal Land Banks of Wichita, St. Paul and Spokane were

designated as financial agents of the Government for the making of seed grain loans to farmers in drought stricken sections, the President, at the request of the Secretary of Agriculture, having set aside \$5,000,000 for that purpose out of his \$100,000,000 war funds. The three Federal Land Banks mentioned have made upwards of 15,000 of these seed grain loans, aggregating upwards of \$4,500,000, and are now engaged in collecting these loans, all of which were secured by crop liens. The Federal Land Banks acted in this matter without compensation under the provisions of a joint circular of the Treasury Department and the Department of Agriculture allowing the actual expenses of the several Federal Land Banks but no compensation. (Transcript p. 10.)

ARGUMENT.

The Objects of the Act.

Congress has explicitly defined the objects of the Act in its title. These are:

- (1) "To provide capital for agricultural development"; and, to this end, "to create standard forms of investment based upon farm mortgage" and "to equalize rates of interest upon farm loans."
- (2) "To furnish a market for United States bonds."
- (3) "To create Government depositaries and financial agents for the United States."

These were legitimate ends within the power of Congress, and Congress used appropriate means to attain these ends.

- (1) Congress provided for the investment of public moneys in the capital stock of the Federal Land Banks to be employed in the making of loans to cultivators of the soil for the purpose of encouraging agricultural development throughout the country and provided for the borrowing of money through the issue of farm loan bonds for the same purpose.
- (2) Congress provided that not less than five percent of the capital of Federal Land Banks, taken by the cooperative Farm Loan Associations through which loans are made, "shall be invested in United States Government bonds" (Farm Loan Act, Sec. 5).

(3) Congress empowered Federal Land Banks not only to issue Farm Loan bonds and to invest in farm mortgages, but also

“Fifth. To deposit its securities, and its current funds subject to check, with any member bank of the Federal Reserve System, and to receive interest on the same as may be agreed.

“Sixth. To accept deposits of securities or of current funds from National farm loan associations holding its shares, but to pay no interest on such deposits.

“Seventh. To borrow money, to give security therefor, and to pay interest thereon.

“Eighth. To buy and sell United States bonds.” (*id.* Sec. 13).

(4) Congress provided that amortization and other payments on the principal of first mortgages held by the Federal officer, known as the Farm Loan Registrar, should constitute a trust fund to be applied or employed to pay off or purchase farm loan bonds, or to loan on security of farm lands, or “to purchase United States Government bonds” (*id.* Sec. 22).

(5) Congress further provided that the Land Banks should be the depositaries of public money except receipts from customs, when designated by the Secretary of the Treasury (*id.* Sec. 6).

(6) Congress further provided that the Land Banks “may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them” (*id.* Sec. 6).

(7) Congress declared that Farm Loan bonds issued under the Act "shall be deemed and held to be instrumentalities of the Government of the United States" (*id.* See, 26).

As we said in our brief on the former argument, and this is a sufficient comment upon the remarks of appellant's counsel,—

"The fact that Congress combined the exercise of two powers does not derogate from the exercise of either one. Congress not only had the authority to provide financial aid to promote the cultivation of the soil and to create an appropriate organization to that end, Congress also had authority to provide for the creation of additional financial institutions to assist it in the fiscal operations of the government. The Federal Land Banks served both purposes. That they serve either one is sufficient to sustain the validity of the legislation in question." (p. 59)

It is a fundamental principle invariably recognized that the Court will not assume to restrain the exercise of the lawful power of Congress upon the ground that Congress has had a wrongful motive or purpose. A contrary doctrine would disrupt the Government. In an extreme case of the exercise of the taxing power, this Court strongly stated the principle, as follows:

"Whilst, as a result of our written constitution, it is axiomatic that the judicial department of the government is charged with the solemn duty of enforcing the Constitution, and therefore in cases properly presented, of determining whether a given manifestation of authority has exceeded the power conferred by that instrument, no instance is afforded from the foundation of the government where

an act, which was within a power conferred, was declared to be repugnant to the Constitution, because it appeared to the judicial mind that the particular exertion of constitutional power was either unwise or unjust. To announce such a principle would amount to declaring that in our constitutional system the judiciary was not only charged with the duty of upholding the Constitution but also with the responsibility of correcting every possible abuse arising from the exercise by the other departments of their conceded authority. So to hold would be to overthrow the entire distinction between the legislative, judicial and executive departments of the government, upon which our system is founded, and would be a mere act of judicial usurpation. * * * * This, when reduced to its last analysis, comes to this, that, because a particular department of the government may exert its lawful powers with the object or motive of reaching an end not justified, therefore it becomes the duty of the judiciary to restrain the exercise of a lawful power wherever it seems to the judicial mind that such lawful power has been abused. But this reduces itself to the contention that, under our constitutional system, the abuse by one department of the government of its lawful powers is to be corrected by the abuse of its powers by another department.

"The proposition, if sustained, would destroy all distinction between the powers of the respective departments of the government, would put an end to that confidence and respect for each other which it was the purpose of the Constitution to uphold, and would thus be full of danger to the permanence of our institutions."

McCray v. United States, 195 U. S. 27, 53-55.

Hamilton v. Kentucky Distilleries and Warehouse Co., 251 U. S. 146, 161.

We may therefore dismiss so much of the argument of appellant's counsel as is devoted to considerations of *policy*, and the references to statements and arguments opposing the proffer of governmental aid for agricultural development. It would be a simple matter to present the other side of this question and to cite the opinions of qualified statesmen in its support. But the forum for such a debate is to be found in Congress; there is no room for controversy here. The protection of food and the conservation of agricultural interests are obviously matters of primary national concern, and the importance of providing the necessary financial aid, and the organization of credit, to promote the production of food is apparent, we think, to all close students of the subject. The selection of means, within the range of constitutional authority, is a legislative question. So far as the matter of policy is concerned, Congress, in the exercise of its prerogative, has settled it. It is not open here to question the wisdom of that policy. In this Court the sole question is one of *power*. The principle is thus stated in the *Legal Tender Cases*, 12 Wall. 457, 539:

"Before we can hold the legal tender acts unconstitutional, we must be convinced they were not appropriate means, or means conducive to the execution of any or all of the powers of Congress, or of the government, not appropriate in any degree (for we are not judges of the degree of appropriateness), or we must hold that they were prohibited."

United States v. Fisher, 2 Cranch 358.

M'Culloch v. Maryland, 4 Wheat. 316, 421.

Juilliard v. Greenman, 110 U. S. 421, 440-441.

We submit—

I. That Congress has power to use the public moneys, and to provide for the borrowing of money, to aid in agricultural development throughout the country in accordance with a systematic and general plan to promote the cultivation of the soil, involving the application of money through loans or otherwise, and that Congress having this power could exercise it by the adoption of appropriate means to that end and the creation of instrumentalities for that purpose;

II. That Congress has the power to judge for itself what fiscal agencies the Government needs and that its decision of that question is not open to judicial review; that Congress may create in its discretion, as it has created in this instance, moneyed institutions equipped to serve as fiscal agents of the Government and to provide a market, as stated in the Act, for United States bonds.

The Federal Land Banks are lawfully created agencies of the United States in that (a) they are the means for the application of public moneys for a proper purpose; (b) they are facilities organized for the purpose of supplying financial aid, through credits on a general plan, which it is competent for the Government directly to supply and to organize instrumentalities to supply; (c) they are constituted fiscal agents of the Government and are bound to perform all reasonable duties imposed upon them as such agents; and (d) they aid in the exercise of the borrowing power by the provisions for investment and dealing in United States bonds.

Each one of the purposes stated, we conceive, would be alone sufficient to sustain the Act. *The Federal Land Banks, from their inception to their winding up, are nothing but financial institutions constituting Federal instrumentalities whose main purpose is to perform governmental functions.* Congress is the judge of the *need* for these instrumentalities and has measured that need.

III. That Congress may protect the securities created under its legislation from impairment or destruction by making them exempt from taxation.

FIRST: Congress had power to use the public money, and to provide for the borrowing of money to aid in agricultural development throughout the country in accordance with the systematic and general plan to promote the cultivation of the soil, involving the application of money through loans or otherwise. And Congress, having this power, could exercise it by the adoption of appropriate means to that end and the creation of instrumentalities for that purpose.

The initial question, then, is (1) as to the *end* to which Congress may provide for the use of money, and (2) as to the *means* for the attainment of this end.

(1) Congress had power directly to use the public moneys for the purpose of stimulating agricultural development. Congress was not limited to the use of public moneys by outright appropriations, but having that authority, could create a revolving fund to be used through loans. The purpose thus subserved through the provisions of the Act was a public purpose.

At the outset the Act contemplated that the entire capital of the Federal Land Banks might be supplied by the Federal Government. In fact, in accordance with the Act, the Government established the twelve Federal Land Banks (Farm Loan Act, Sec. 4) and, with the exception of a trifling amount, did provide the entire initial capital of all these banks, that is, \$8,892,130 out of \$9,000,000 (Complaint, Transcript p. 9.) The Federal Farm Loan Board, composed of the Secretary of the Treasury and the appointees of the President, not only has continuously broad powers of control

over the operations of these Federal Land Banks, but at the outset that Board appointed all the directors of each bank and these directors chose from their number the officers of the bank and employed such attorneys, assistants and other employees as were necessary, subject to the approval of the Federal Farm Loan Board (sec. 4). The Act contemplated that the temporary organization of the Federal Land Banks should yield to a permanent organization consisting in the case of each bank of a board of directors of nine members, three of whom are to be appointed by the Federal Farm Loan Board. But by the amendment of January 18, 1918 (40 Stat. 431), the temporary organization is to be continued indefinitely, that is, it is to continue in the case of any Federal Land Bank so long as any Farm Loan Bonds issued by that bank are held by the Treasury of the United States. The Government holds \$175,000,000 of these bonds, and it may hold these bonds for a long time to come. (Transcript, p. 9.) Pursuant to the Act, the Federal Farm Loan Board has appointed a Farm Loan Registrar in each Land Bank District and also Land Bank Appraisers and Examiners. These appointees are public officers (sec. 3), and they and their successors are to perform their prescribed official functions as long as the Federal Land Banks exist. The Federal Land Banks started as incorporated bureaus of the Government, and up to the present time each of them has been, and for an indefinite time will be, directly and completely managed by those selected and controlled by Federal officers.

The moneys at first available for loans were those supplied directly by the Treasury through its investment of the public funds in the capital stock of the Federal Land Banks, and the addi-

tional moneys used for the same purpose have been obtained by borrowing money on Farm Loan Bonds issued by the Federal Land Banks under the direction of the Federal Farm Loan Board, which controls the issue and terms of these bonds. It is in this manner that all the outstanding Farm Loan Bonds issued by the Federal Land Banks have been placed in the hands of investors.

We do not find that appellant's counsel meets the point that Congress has power directly to appropriate the public moneys in support of agriculture, but rather their argument is directed to the *means* which have been adopted by Congress, a matter which we shall later discuss. Of course, it is beside the mark to argue from the grounds taken in the debates in Congress to support the Act as if these should be taken as exclusive or as if the purpose here is to define their scope. Congress has passed the Act, and before it can be nullified it must appear that in no aspect of Federal power, or of all Federal powers, had Congress the authority to pass it.

It is, then, pertinent to observe that all that is done by the Federal Land Banks, the instrumentalities created by Congress and actually under Government control, Congress could have done directly by direct appropriations of money loaned through Federal officers. Congress could have raised the money either by taxes or by the exercise of the borrowing power. In fact, Congress provided through investment in the capital stock the initial moneys and in fact raised the additional moneys needed through the action of its officers in borrowing upon the securities which it defined and had issued by the banks under the control of the Federal Farm Loan Board.

We may at once meet the contention which the appellant's counsel bases on the decision in *Kansas v. Colorado*, 206 U. S. 46.

The Farm Loan Act deals with pecuniary aid alone, that is, it is concerned only with the application of money.

There is no attempt to conduct agricultural activities within the State, to undertake the management of farm property, to manage or control any internal concerns of the State, or to interfere with the exercise of the authority of the States over the lands within their borders. Thus, the case of *Kansas v. Colorado* is not at all in point. There is an obvious distinction between the provision for financial aid, which is within the power of Congress as expressly conferred and as understood from the foundation of the Government, and the conduct of activities and the management of concerns within the State which lie outside the power of Congress.

The case of *Kansas v. Colorado* was an original suit brought to restrain Colorado from diverting the water of the Arkansas River for the irrigation of lands in Colorado and thus preventing, as was alleged, the natural and customary flow of the river into Kansas. The United States filed a petition for intervention, asserting the right to control the waters of the river to aid in the reclamation of arid lands. The contention was that "the determination of the rights of the two states *inter se* in regard to the flow of waters in the Arkansas River" was "subordinate to a superior right to control the whole system of the reclamation of arid lands." It was recognized in the opinion of Mr. Justice Brewer that the National Government

had full power to dispose of and make all needful rules and regulations respecting its own property, but the power over its own property did not embrace a grant to Congress of legislative control over the States. Appreciating this, the Government brought forward the doctrine of "inherent power" as giving to Congress the broad control asserted over the whole subject of reclamation of arid lands. The contention involved the subordination of all proceedings with respect to the *actual conduct* of that reclamation to such as might be provided by the legislation of Congress.

In denying the doctrine of inherent power as asserted, the Court did not in any way limit the familiar scope of the power which the Constitution actually confers. The present question was in no way involved. Here there is simply the extension of *financial aid*. No one can get it except under the conditions stated, which merely assure systematic aid to promote cultivation of the soil throughout the country. There is no provision for the conduct of agricultural activities and no interference whatever with any right reserved to the States.

The questions then are (a) Is the purpose a public one? And, (b) If it is a public purpose, upon what ground can the power to apply money for that purpose be denied to Congress?

**The purposes in view are public, not private;
national, not local.**

(a) Much is said in the argument of appellant's counsel in relation to *private* purposes, and *private* institutions. The Federal Land Banks certainly were not organized as *private* institutions;

they were organized and were, and still are, directly controlled and managed by appointees of the Government. They have not *become* private institutions and considering the public ends they have served, now serve and always will serve, they never will be *private* institutions. It may here be noted that, aside from the Government, no shareholder is entitled to vote except the co-operative national farm loan associations (Sec. 5), and the stock taken by these associations in connection with the loans which they obtain for their members, that is, stock to the amount of five percent of each loan, is retired when the loan is paid (Sec. 7). Whatever profit may go through dividends to these shareholders as borrowers in effect goes against the loans.

The argument that the purpose of the establishment of the Federal Land Banks is a private purpose will not, it is submitted, bear examination. Rather we conceive this purpose to be one of the most important public purposes to which Congress has ever provided for the application of money.

It will hardly be disputed that the agricultural interests of the country, broadly considered, are of National and not merely of State concern. Any view that would treat the food supply of the people as not a matter directly related to the common defense and general welfare of the United States would be so narrow as to be quite inadmissible. The deliberate judgment of Congress is shown in the wide range of its departmental appropriations. The objection to the validity of the action of Congress in the present case, so far as it relates to the provision for the use of money (as distinguished from the actual conduct of agricultural activities within the States), must rest,

it would seem, not upon the fact that the provision is in aid of the agricultural interests of the United States but upon the ground that it is designed to provide loans to owners of farm lands. The objection, then, is found to be a single one—that the purpose is private because of the benefit to individual cultivators of the soil.

It is, of course, a fundamental proposition that taxation must be for a public purpose. On this principle, State legislation authorizing municipalities to issue bonds in aid of private enterprises has been declared in certain cases to be invalid. (See *Loan Association v. Topeka*, 20 Wall., 655; *Parkersburg v. Brown*, 106 U. S., 487; *Cole v. LaGrange*, 113 U. S., 1.) It may also be assumed that the provision conferring upon Congress the power to lay taxes, and hence the power to appropriate the public money to "provide for the common defence and general welfare of the United States", cannot be deemed to confer authority to do either for a purpose essentially private. But this familiar doctrine does not reach this case.

Just as well established is the principle that a purpose is not essentially a private one from the constitutional standpoint simply because private individuals may secure direct benefits through its execution. When direct individual benefit is involved, the question must always be, on a fair analysis, whether that benefit constitutes the object or is merely incidental to the public advantage which it is competent for the legislature to secure. Great measures of an undoubted public nature and advantage often carry with them benefits to individuals, or to classes of persons, whose immediate gain does not obscure the relation of the measures to the general welfare. Thus, it is recognized that while irrigation and drainage plans,

which have become familiar subjects of legislation in many States, may directly benefit the owners of the property which is to be watered or drained, the scheme may still bear such a relation to the public welfare as to accord with the legal conception of a public use; and, in this view, legislation providing for the organization of irrigation and drainage districts in order to improve the property within them has been sustained. Thus, it was said by this Court in *Fallbrook Irrigation District v. Bradley*, 164 U. S., 112, 161, 164:

"To irrigate and thus to bring into possible cultivation these large masses of otherwise worthless lands would seem to be a public purpose and a matter of public interest, not confined to the land owners, or even to any one section of the State. The fact that the use of the water is limited to the land owner is not therefore a fatal objection to this legislation. It is not essential that the entire community or even any considerable portion thereof should directly enjoy or participate in an improvement in order to constitute a public use. All land owners in the district have the right to a proportionate share of the water, and no one land owner is favored above his fellow in his right to the use of the water. It is not necessary, in order that the use should be public, that every resident in the district should have the right to the use of the water.

"* * * Taking all the facts into consideration, * * * we have no doubt that the irrigation of really arid lands is a public purpose, and the water thus used is put to a public use."

In *Clark v. Nash*, 198 U. S. 361, the question was as to condemnation for an enlarged irrigation ditch. It was insisted by the plaintiffs in

error that the proposed use of the enlarged ditch across their land was not a public use. They argued "that no individual has the right to condemn land for the purpose of conveying water in ditches across his neighbor's land, for the purpose of irrigating his own land alone, even where there is, as in this case, a state statute permitting it". But the Court declined to sustain this contention, holding that the fact that the individual was to benefit was not necessarily controlling, and that the exigencies of soil and climate might properly be taken into consideration.

Strickley v. Highland Boy Gold Mining Company, 200 U. S. 527, affords a striking illustration. The proceeding was one to condemn a right of way for an aerial bucket line across a placer mining claim of the plaintiffs in error. The Court again recognized "the inadequacy of use by the general public as a universal test" and that the public welfare of a state might demand that such rights of way should be accorded for aerial lines between the mines upon its mountain sides and the railways in the valleys below and hence that it could not be said that the individual benefit to the land owner in question took the case out of the category of permissible condemnation. As was said in *Hairston v. Danville & Western Railway Company*, 208 U. S. 598, 606, the determination of the question by the courts whether the nature of the use was public or private had been influenced "by considerations touching the resources, the capacity of the soil, the relative importance of industries to the general public welfare, and the long-established methods and habits of the people."

In *O'Neill v. Leamer*, 239 U. S. 244, the plaintiffs in error contended that the drainage plan in

question was simply one for the private advantage of the property owners benefited. But the Court said that "States may take account of their special exigencies, and when the extent of their arid or wet lands is such that a plan for irrigation or reclamation according to districts may fairly be regarded as one which promotes the public interest, there is nothing in the Federal Constitution which denies to them the right to formulate this policy or to exercise the power of eminent domain in carrying it into effect. * * * Nor is it an objection that private property within the district, which is established in execution of the public policy, will be benefited" (*id.*, p. 253; see also *Houck v. Little River Drainage District*, 239 U. S. 254).

In these cases, this Court in enforcing the Fourteenth Amendment has recognized the propriety of giving weight to State exigencies and of regarding with great respect the judgment of the State courts upon what should be deemed public uses within the State. Certainly, no less weight should be accorded to the determinations of Congress as to what is required for the general welfare of the country. If the fact that individuals are to benefit directly from the execution of the approved policy does not require the conclusion that the purpose is private in the one case, it does not require such a conclusion in the other. And when it is contended that provision by Congress for the use of public money is for a purpose essentially private, it cannot be doubted that due respect to the judgment of Congress requires the consideration of all the circumstances and conditions which can possibly support its action; and although this action takes a form through which direct advantages are to accrue to individuals, or

groups, there must still be the inquiry whether, notwithstanding this fact, the provision can be regarded as being for a purpose not special, private, or local, but in truth general and national.

Is then, the plan of the Federal Farm Loan Act primarily in aid of private or individual interests as distinguished from public purposes involved in the common defense and general welfare of the United States?

With respect to the features of the plan it is to be noted,

(1) The Act provides a *system* designed to promote agricultural development.

(2) The loans are made only to those who are or are about to become, actual cultivators of the soil, and are made upon the security of farm mortgages.

(3) These mortgage loans are made only for the following purposes: (a) to provide for the purchase of land for agricultural uses; (b) to provide for the purchase of equipment, fertilizers and live stock necessary for the proper and reasonable operation of the mortgaged farm; (c) to provide buildings and for the improvement of farm lands ("equipment" and "improvement" to be defined by the Federal Farm Loan Board); and (d) to liquidate indebtedness of the owner of the land mortgaged existing at the time of the organization of the first National Farm Loan Association within the county, or indebtedness subsequently incurred for the purposes above mentioned. No loan is to exceed fifty percent of the value of the land mortgaged and twenty percent of the value

of the permanent insured improvements thereon and the amount of loans to any one borrower is not to exceed \$10,000.

(4) The system is for continental United States (save Alaska), that is, the mortgage loans are to be available to actual cultivators of the soil throughout the country.

It is thus apparent that the Act provides for systematic aid to the development of agriculture, so devised as to be generally available throughout the country and so limited as to indicate the purpose to promote the actual cultivation of the soil in every part of the United States where cultivation is possible and where aid is needed for that specific purpose.

That this method of providing financial aid was deemed to be essential to the welfare of the country clearly appears from an examination of the views which prevailed in Congress. The cultivators of the soil, whose activities form the necessary foundation of the common prosperity, were lacking in the facilities which would enable agricultural development to be pressed to the utmost in response to the National exigency. To say the least this view was an entirely reasonable one. It makes no difference whether or not the Court would take the same view, as we submit that the Court would be unable to say that it was so destitute of foundation that it could not be entertained by Congress. The matter was peculiarly one for the exercise of the legislative discretion. That credit difficulties were an embarrassment to cultivators of the soil was not confined to an one section of the country. The significant thing in the prolonged hearings that were had upon this

subject by committees of Congress was that the same difficulties were encountered throughout the country and that a systematic country-wide relief appeared to be of grave importance. In the report of the Committee on Banking and Currency in May, 1916 (H. R. Report, No. 630) it was said:

"It has become manifest that a new form of credit organization must be established which shall be especially and peculiarly adapted to the farmers' requirements. It must be designed to give a service that commercial banks, savings banks, insurance companies, individuals, and other existing agencies cannot give at the present time. For example, it must be enabled and prepared to grant long-time amortizable loans upon farm-land mortgages at low interest rates; it must be enabled to secure ample funds for the use of the farmer from the investing public. Under such a system the farmer borrower will not be compelled to assume a high interest rate mortgage obligation due within a comparatively short period of time under which he is subjected to frequent renewals with the incidental trouble, expense, and danger of foreclosure, and will not be dependent upon credit obtained under the most exacting and burdensome conditions."

To say that Congress was limited to the expenditure of many millions of dollars in investigations, maintenance of bureaus, inspections, purchase and distribution of seeds and plants, co-operation with States in experimentation, furnishing of bulletins and of statistical information, in order to foster agricultural development, and could not undertake this organization of financial aid which was essential to that development, would be to establish an artificial distinction un-

known to the Constitution and to conceive a Government not deserving to be called National.

Nor can the legislation be condemned as being outside the sphere of permissible Federal action without taking into consideration the existing exigencies within the contemplation of Congress. While the United States was not at war when this legislation was enacted, and the question is not one relating to the exercise of power incident to the actual conduct of war, it remains true that the Act was passed at a time when many of the civilized nations were at war and the question of maintenance of the food supply was of first importance. Even if it be assumed that our entry into the war was not then contemplated, there was still a serious emergency due to the devastation of the war and the withdrawal from agriculture of productive labor. The exigency which later was recognized by every one with respect not only to the food supply of this country, but of the world, it was within the power of Congress to foresee.

Appellant's counsel resorts to the familiar practice of picturing consequences which may ensue in the exercise of power. This is the revival of an argument, the futility of which was long since exposed. The fallacy was early pointed out by Alexander Hamilton in his Opinion as to the Constitutionality of the Bank of the United States (3 Hamilton's Works, p. 458). After showing that because the powers of government in this country are divided between the national and state governments it does not follow that the United States is not sovereign with regard to the objects of the powers delegated to the United States, and that as to all such powers and objects the United States has plenary and sovereign authority, he said in words which can never be forgotten (*id.*):

"It leaves, therefore, a criterion of what is constitutional, and of what is not so. This criterion is the *end*, to which the measure relates as a *means*. If the *end* be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that *end*, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority."

It cannot, therefore, be denied that if Congress has the power to see to the application of money in support of agricultural development in this country, it has the power to select the making of loans, according to a general system to cultivators of the soil throughout the country as a *means* to that end. To hold otherwise would be to compel the absolute disposition of money instead of making possible the repeated use of the same amount through a revolving fund. It would attempt to create an artificial measure of public *ends*, as limited to objects independent of individual benefit, as though such a thing could practically be conceived. It would interpose a judicial judgment as to matters of *policy*, which is obnoxious to any sound theory of judicial action. Manifestly, Congress is not limited in the putting of money into literature, the distribution of seeds, educational institutions, etc. It is not compelled to throw money into the street in the hope that the right passer-by will pick it up. It may devote itself intelligently to a direct benefit, through the making of loans in a systematic manner, provided its plan, as is clearly the case here, is of such a broad and general character as to be an appropriate means of serving a public interest.

The power of Congress in the application of money.

(b) In our former argument, we dwelt at some length upon the scope of the power to use or apply money, the power necessarily involved in the express authority conferred upon Congress

“To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States” (Const., Art. I, sec. 8, subd. 1),

and also necessarily involved in the borrowing power, as obviously money raised by the exercise of the latter power can be used for any purpose for which money raised by taxation can be used.

We find in the appellant’s brief no answer to the views of Hamilton, Marshall, Monroe and Story, as to the scope of this power.

Hamilton, Report on Manufactures (December 5, 1791; 4 Hamilton’s Works, 151-152. Quoted in our brief on former argument, pp. 25-26).

President Monroe, “Views of the President of the United States on the Subject of Internal Improvements” (*id.*, pp. 27-28).

Gibbons v. Ogden, 9 Wheat. 199 (*id.*, p. 28).

1 Story on the Constitution, secs. 922-924 (*id.*, pp. 29-31).

Willoughby on the Constitution, sec. 269.

(See, also, 4 Jefferson’s Correspondence, 524, 525; Mr. Adams’ letter to Mr. Stevenson, July 11, 1832; 2 Elliot’s Deb. 170, 183, 195, 328, 344; 3 *id.*,

262, 290; 4 *id.*, 226; Mr. Justice Miller's "Lectures on the Constitution," pp. 229-231, 235.)

The accepted view is not that the clause—"provide for the common Defence and general Welfare of the United States"—creates an independent power, or on the other hand that it is limited and explained by the subsequent enumeration of the powers of Congress, but that this clause does qualify the preceding clause with respect to the laying of taxes, etc., and thus defines the scope of the power of Congress *so far as the application of money is concerned*.

As Hamilton said (*supra*) :

"It is, therefore, of necessity, left to the discretion of the National Legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, *as far as regards an application of money*. The only qualification of the generality of the phrase in question, which seems to be admissible, is this: that the object to which an appropriation of money is to be made be general, and not local; its operation extending in fact or by possibility throughout the Union, and not being confined to a particular spot.

Mr. Justice Story's discussion of the question is exhaustive and authoritative. He says (secs. 922-924) :

"A power to lay taxes for any purposes whatsoever is a general power; a power to lay taxes for certain specified purposes is a limited power. A power to lay taxes for the

common defence and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them. If the defence proposed by a tax be not the common defence of the United States, if the welfare be not general, but special, or local, as contradistinguished from national, it is not within the scope of the Constitution. If the tax be not proposed for the common defence, or general welfare, but for other objects, wholly extraneous (as, for instance, for propagating Mahometanism among the Turks, or giving aids and subsidies to a foreign nation, to build palaces for its kings, or erect monuments to its heroes), it would be wholly indefensible upon constitutional principles. The power, then, is, under such circumstances, necessarily a qualified power. If it is so, how then does it affect or in the slightest degree trench upon the other enumerated powers? . . . Each has its appropriate office and objects; each may exist without necessarily interfering with or annihilating the other (sec. 922). . . . But then, it is said, if Congress may lay taxes for the common defence and general welfare, the money may be appropriated for those purposes, although not within the scope of the other enumerated powers. Certainly, it ~~may~~ be so appropriated; for if Congress is authorized to lay taxes for such purposes, it would be strange, if, when raised, the money could not be applied to them. That would be to give a power for a certain end, and then deny the end intended by the power (sec. 923). . . . That the same means may sometimes or often be resorted to, to carry into effect the different powers, furnishes no objection; for that is common to all governments. That an appropriation of money may be the usual or best mode of carrying into effect some of these powers, furnishes no objection; for it is one

of the purposes for which the argument itself admits that the power of taxation is given. That it is indispensable for the due exercise of all the powers may admit of some doubt. The only real question is, whether, even admitting the power to lay taxes is appropriate for some of the purposes of other enumerated powers (for no one will contend that it will, of itself, reach or provide for them all), it is limited to such appropriations as grow out of the exercise of those powers. In other words, whether it is an incident to those powers, or a substantive power in other cases, which may concern the common defence and the general welfare. *If there are no other cases which concern the common defence and general welfare, except those within the scope of the other enumerated powers, the discussion is merely nominal and frivolous.* *If there are such cases, who is at liberty to say that, being for the common defence and general welfare, the Constitution did not intend to embrace them?* The preamble of the Constitution declares one of the objects to be, to provide for the common defence and to promote the general welfare; and if the power to lay taxes is in express terms given to provide for the common defence and general welfare, what ground can there be to construe the power short of the object,—to say that it shall be merely auxiliary to other enumerated powers, and not coextensive with its own terms and its avowed objects? One of the best established rules of interpretation, one which common-sense and reason forbid us to overlook, is, that when the object of a power is clearly defined by its terms, or avowed in the context, it ought to be construed so as to obtain the object, and not to defeat it. The circumstance that, so construed, the power may be abused, is no answer. All powers may be abused; but are they then to be abridged by those who are to administer them, or de-

nied to have any operation? If the people frame a constitution, the rulers are to obey it. **Neither rulers nor any other functionaries**, much less any private persons, have a right to cripple it, because it is, according to their own views, inconvenient or dangerous, unwise or impolitic, of narrow limits or of wide influence" (italics ours).

While this Court has not definitely passed upon the construction of the clause with reference to the scope of the power of Congress in the use of money (see *United States v. Realty Co.*, 163 U. S., 427, 440), there are general expressions supporting the view that the words—"provide for the common defence and the general welfare of the United States"—are to be taken as qualifying the power. See *Gibbons v. Ogden*, *supra*. In *United States v. Gettysburg Electric Railway Company*, 160 U. S., 668, 681, it is said: "It (Congress) has the great power of taxation to be exercised for the common defense and general welfare"; and this statement was made as a part of the reasoning of the court in sustaining the power of the United States to condemn land for the preservation of the battlefield of Gettysburg, as being for a public use, as it made direct appeal to patriotic sentiment and tended to enhance "love and respect for those institutions for which these heroic sacrifices were made" (*id.* p. 682). When the validity of the sugar bounty provision in the Tariff Act of October 1, 1890 (26 Stat., 567, par. 231), was challenged, the court found it unnecessary to decide the question (*Field v. Clark*, 143 U. S., 649, 695). Later, when, after the repeal of that provision Congress passed the Act of March 2, 1895 (28 Stat., 910, 933), providing a similar bounty upon sugar manufactured

and produced before the repeal, it was held that the appropriation was valid, as being in the discharge of a moral obligation which Congress was entitled to recognize as a "debt" within the fair meaning of the constitutional provision (*United States v. Realty Co., supra*; *Allen v. Smith*, 173 U. S. 389, 394, 402). Certainly, this court has never decided adversely to the power of Congress to meet by its use of money great national needs and has never construed the taxing clause otherwise than in accord with the construction placed upon it by Hamilton, Marshall, Monroe and Story.

**Practical Construction of the power of Congress
to apply money.**

The power to tax and the power to apply the moneys raised by taxation are addressed to the same objects. The latter is qualified to the same extent as is the former. To hold otherwise, as Story says, "would be to give a power for a certain end, and then deny the end intended by the power." Congress, from the foundation of the government, has proceeded upon the view that the powers specified in the subsequent provisions of the Constitution do not limit its authority to appropriate money for the common defense and general welfare of the United States under the clause relating to taxes. Mr. Justice Story thus states the experience of the first forty years of our history (1 Story on the Constitution, sec. 991):

"In regard to the practice of the government, it has been entirely in conformity to the principles here laid down. Appropriations have never been limited by Congress to cases falling within the specific powers

enumerated in the Constitution, whether those powers be construed in their broad or narrow sense. And in an especial manner appropriations have been made to aid internal improvements of various sorts, in our roads, our navigation, our streams, and other objects of a national character and importance. In some cases, not silently, but upon discussion, Congress has gone the length of making appropriations to aid destitute foreigners and cities laboring under severe calamities; as in the relief of the St. Domingo refugees, in 1794, and the citizens of Venezuela, who suffered from an earthquake in 1812. (See Act of 12th Feb., 1794, Ch. 2; Act of 8th May, 1812, Ch. 79; 4 Elliot's Debates, 240). An illustration equally forcible of a domestic character, is in the bounty given in the cod fisheries, which was strenuously resisted on constitutional grounds in 1792, but which still maintains its place in the statute book of the United States" (See Act of 16th Feb., 1792, Ch. 6; 4 Elliot's Debates, 234-238).

In addition to the instances mentioned by Mr. Justice Story, we have numerous illustrations afforded by the action of Congress since his day. The annual appropriations show a practically continuous assertion of broad authority in the application of money, as, for example, in the support of the Bureau of Education (including the special provision for aiding the Education of the Blind, Act of March 3, 1879, Chap. 186, 20 Stat., 467), of the Smithsonian Institution, and of the constantly expanding and varied work of the Department of Agriculture (See, *e. g.*, Act of August 11, 1916, Chap. 313, 39 Stat., pp. 452-456; 463-467; 470). The validity of such action has not been questioned, and as Professor Willoughby says, "the doctrine has become an established one that Congress may appropriate money in aid of

matters which the Federal Government is not constitutionally able to administer and regulate." (Willoughby on the Constitution, sec. 269.) Mr. Justice Story sums up the matter by saying (sec. 977): "The argument in favor of the power" (to appropriate money for the common defense and general welfare) "is derived in the first place, from the language of the clause conferring the power (which, it is admitted, in its literal terms, covers it); secondly, from the nature of the power, which renders it in the highest degree expedient, if not indispensable, for the due operations of the national government; thirdly, from the early, constant, and decided maintenance of it by the government and its functionaries, as well as by many of our ablest statesmen, from the very commencement of the Constitution. So, that it has the language and intent of the text, and the practice of the government, to sustain it against an artificial doctrine set up on the other side."

Nothing could better illustrate the accepted principle than the appropriations to aid in agricultural development. Since the year 1839 there has been a constant disbursement of public moneys in the promotion and fostering of agriculture, in disseminating information, distributing seeds, and in aiding agricultural schools. For upwards of sixty years—since the Act of 1857 (11 Stat. 226)—Congress has made provision for the distribution of cuttings and seeds. It was in that year also that provision was made for investigation as to the consumption of cotton (*id.*).

The Department of Agriculture was established in 1862 (12 Stat. 387). The Act provided as to this department:

"the general designs and duties of which shall be to acquire and diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word, and to procure, propagate, and distribute among the people new and valuable seeds and plants."

The far-sighted policy of the Morrill Land Grant Act of 1862 (12 Stat. 503) made possible through donations of public land the establishment of institutions for instruction in agriculture throughout the country. Funds have been provided to maintain bureaus of agricultural statistics, for the introduction and protection of insectivorous birds, for laboratories to engage in experimentation in agricultural chemistry (12 Stat. 69). The great pests, or enemies of crops, have been the subject of constant consideration, and frequent appropriations have been made to aid in their elimination (21 Stat. 259; 40 Stat. 374).

In 1884, the Bureau of Animal Industry was established to disseminate information as to domestic animals and their diseases (23 Stat. 277). In 1890, the weather bureau was put in charge of the Department of Agriculture (26 Stat. 653), to make more readily available comprehensive information as to matters of special interest to those engaged in the cultivation of the soil.

The Irrigation Survey was established in 1889 under the direction of the Secretary of the Interior (25 Stat. 960), and in 1913, the Bureau of Mines (37 Stat. 681).

The scope of the activities of the Department of Agriculture now embraces those of the Weather Bureau; the Bureau of Animal Industry (including inspection and quarantine work, the

eradication of scabies in sheep and cattle, tuberculin and mallein testing, experiments in animal feeding and breeding, including co-operation with State agricultural experiment stations, scientific investigations of hog cholera and other diseases of animals); the Bureau of Plant Industry (including investigations of diseases of plants, of orchard and other fruits, of forest and ornamental trees and shrubs, of soil bacteriology and plant-nutrition, of soil fertility, of plants yielding drugs, poisons and oils, of cereals and cereal disease, of sugar beets, and generally of crop production, and the purchase and distribution of valuable seeds, bulbs, shrubs, vines, cuttings and plants); the Forest Service (including various investigations in forestry); the Bureau of Chemistry (embracing various chemical and physical tests and biological investigations of food products); the Bureau of Soils (including investigations of soil types and chemical properties, of productivity and as to possible sources of supply of potash, nitrates, etc.); the Bureau of Entomology (including investigations of insects affecting fruits, orchards, vineyards and crops); the Bureau of Biological Survey (including the investigation of the food habits of birds and mammals in relation to agriculture); the Division of Publications; the Bureau of Crop Estimates (covering all important data relating to agriculture); the States Relations Service (including farmers' co-operative demonstration work in connection with State organizations, and for the study of methods to combat the cotton-boll weevil); the Office of Public Roads and Rural Engineering (including investigations as to farm irrigation and drainage and construction of farm buildings); the Office of Markets and Rural Organization (including investigations of marketing

methods, studies of co-operation among farmers in rural credits and other forms of co-operation in rural communities); and the Federal Horticultural Board (See, 39 Stat. 446-476; 1134-1166; 40 Stat. 973-1008).

The federal appropriations in 1917, in support of agriculture amounted to upwards of \$29,000,000, and in 1918 to upwards of \$45,000,000.

There can be no question as to the continuous practical construction of the powers of Congress to raise and apply money to the effect that this power is not limited to the objects enumerated in the subsequent provisions, but extends to what may properly be deemed to be embraced within the general welfare as expressly provided in the clause which confers the taxing power itself.

As Mr. Chief Justice Marshall said in *M'Culloch v. Maryland*, 4 Wheat, 316, 401:

“An exposition of the Constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded.”

The Borrowing Power.

What has been said with respect to the scope of the taxing power of Congress is applicable to the borrowing power. Certainly, the borrowing power is not more limited as to its objects than the taxing power. Where Congress has the power to apply money to an object, it can raise the money by the exercise of the borrowing power, as well as by taxation, as it may think wise.

As was said by Mr. Justice Gray, in *Juilliard v. Greenman*, 110 U. S., p. 444: “The words ‘to borrow money,’ as used in the Constitution, to desig-

nate a power vested in the national government, for the safety and welfare of the whole people, are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute, or in an authority conferred, by law or by contract, upon trustees or agents for private purposes."

It is manifest that if Congress is entitled to apply money for the common defense and the general welfare of the United States, it necessarily has a wide range of discretion with respect to the objects to be selected. This discretion is not vested in the courts, but in Congress, and the authority of the courts to enforce constitutional restrictions does not entitle them to substitute their judgment for that of Congress as to any question of expediency or policy. (*Wilson v. New*, 243 U. S. 332; *Champion v. Ames*, 188 U. S., 321, 363; *McCray v. United States*, 195 U. S., p. 55.) As has been said by Judge Cooley ("Taxation", 3d Ed., pp. 188, 189):

"It is otherwise with the federal Union also; for though its powers are not general like those of the state, but are limited and defined by the federal constitution, yet as they concern the most important matters of government and relate to subjects not of domestic concern merely, but of international intercourse, and to other matters which sometimes require broad and comprehensive views, and make a policy of liberal expenditures wise and statesmanlike, it would be neither reasonable nor prudent to subject its action in the matter of taxation to critical rules. That which it decides to be an object of public expenditure must generally be so accepted, and error in its action must be corrected by discussion and through public opinion and the elections."

And if the action of Congress, in applying money may be judicially controlled, it is clear that this control could properly be exercised only in a case where it was perfectly plain that the broad limits of legislative discretion had been exceeded and that the application could not from any reasonable point of view be regarded as conducive to the common defense and general welfare.

We conclude then that it was within the power of Congress to have provided a system of credits, that is, to provide a general system for the making of loans to aid actual cultivators of the soil throughout the country, by the use of the moneys of the United States, whether these were raised by taxation or by loans secured by government obligations. It could have laid a tax or provided for the issue of government bonds for that purpose.

And it should be remembered that all that has been done to date by the Government, in its investments in the capital of the Federal Land Banks, and in its provision for the issue of Farm Loan Bonds in order to replenish the fund which started with the capital so subscribed, has been done by the Government itself, the entire operation having been conducted by Federal officers, not only the Federal Farm Loan Commissioners, but the directors of the Federal Land Banks who are still the appointees of the Federal Farm Loan Board, as provided in the Act of January 18, 1918.

All the Farm Loan Bonds which have been issued by the Federal Land Banks, including all the bonds issued by these banks which are the subject of this suit, are bonds, not only the form of which, but the issue of which, has been under the direct control of Federal officials, and these bonds have been issued and all the moneys received from the issue have been received, invested and dealt with exclusively by the officers of the Government of

the United States. The whole proceeding to this moment is a governmental proceeding pure and simple. It is also true that the proceedings hereinafter contemplated throughout the entire history of the Federal Land Banks as it may develop under the provisions of the Act, will be under the supervision of the Government and constitute the performance of a governmental function. But up to date and so far as the question in this suit is concerned, the proceeding has been governmental and nothing else. This alone, we submit, is sufficient to sustain the decree dismissing this bill. And, as we have said, from every point of view, both now and hereafter, the Federal Land Banks must be considered to be the instrumentalities of the Government.

(2) Having this power, with respect to the use of money, Congress could exercise the power by the adoption of appropriate means to that end and the creation of instrumentalities for that purpose.

The power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof" (Const. Art. I, Sec. 8, subd. 18) is a power expressly conferred. It relates to the means for executing *any* and *all* of the powers possessed by the United States. As the United States has the power *to use money* for public purposes, including the promotion of agricultural development, by an appropriate general system of aid to cultivators of the soil, we ask, *upon what ground can it be denied that Congress may create facilities and instrumentalities to this end?*

Appellant's counsel argue that the means adopted are neither "necessary" nor "proper" to the end in view. It is hardly necessary to point out that the words "necessary and proper" involve only the conception of appropriateness. As Hamilton said:

"It is certain, that neither the grammatical nor popular sense of the term requires that construction. According to both, *necessary* often means no more than *needful, requisite, incidental, useful, or conducive to*. It is a common mode of expression to say, that it is *necessary* for a government or a person to do this or that thing, when nothing more is intended or understood, than that the interests of the government or person require, or will be promoted by, the doing of this or that thing. The imagination can be at no loss for exemplifications of the use of the word in this sense. And it is the true one in which it is to be understood as used in the Constitution. The whole turn of the clause containing it indicates, that it was the intent of the Convention, by that clause, to give a liberal latitude to the exercise of the specified powers. The expressions have peculiar comprehensiveness. They are, 'to make all *laws* necessary and proper for *carrying into execution* the *foregoing powers*, and *all other powers* vested by the Constitution in the *Government* of the United States, or in any *department* or *officer* thereof.'

* * * * *

"The *degree* in which a measure is necessary can never be a *test* of the legal right to adopt it; that must be a matter of opinion, and can only be a *test* of expediency. The *relation* between the *measure* and the *end*; between the *nature* of the *means* employed towards the execution of a power, and the *object* of that power, must be the criterion of constitutionality, not the more or less of

necessity or utility" (3 Hamilton's Works, pp. 452, 453, 454).

In the classic words of Mr. Chief Justice Marshall (*M'Culloch v. Maryland*, 4 Wheat. 316; 415-416, 419-420, 421):

"The subject is the execution of those great powers on which the welfare of a nation essentially depends. It must have been the intention of those who gave these powers, to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confiding the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a constitution intended to endure for ages to come, and, consequently, to be adapted to the various *crises* of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances. If we apply this principle of construction to any of the powers of the government, we shall find it so pernicious in its operation that we shall be compelled to discard it."

And, referring to subdivision 18 of Section 8 of Article I of the Constitution, the Chief Justice continued:

“Ist. The clause is placed among the powers of Congress, not among the limitations on those powers.

“2nd. Its terms purport to enlarge, not to diminish the powers vested in the government. It purports to be an additional power, not a restriction on those already granted.

“We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.”

What, then, is the *end* to which the *means* are to be related? The appellant's counsel construct their premise to fit their conclusion. They argue that the *end* is the “*appropriation*” by Congress and hence that only what is requisite to the “*appropriation*” is within the power of Congress. The argument in substance is that if Congress appropriates \$2,000,000 for a public purpose, it may create the machinery for expending the money. Also, we suppose it to be meant, that if Congress desires to borrow \$2,000,000 for a public purpose it may create the mechanism for borrowing the

money, may define the sort of security which is to be issued, and the remedies which will be available and the funds to which there may be recourse on the part of those who lend the money. This, as we have said, is all that is needed, so far as the present question is concerned.

But this view of the *end* is altogether too narrow; it attempts to measure the end by the form of the action of Congress. The *end* for which the power of Congress is conferred, is not the mere "appropriating" by Congress. The power is directed to the *use of money* to provide for the common defense and the general welfare. The power, as we have seen, is not a broad independent power to do *anything* for the common defense and the general welfare, and thus to derogate from all specification of powers, but, as Hamilton said, it is a power for these purposes "*as far as regards an application of money*" (4 Hamilton's Works, 151-152).

As well might it be said that the power of Congress to regulate commerce, together with the authority to do whatever is necessary and proper to carry that power into execution, only embraces the means appropriate to the carrying out of what Congress may undertake to do through the Government directly. The defect in this reasoning is apparent. If the power to regulate commerce embraces the power to control navigation and to build bridges, Congress is not limited to building a bridge itself, or to the building of a bridge through Government officers and employees. Congress may create a corporation to build the bridge. The argument for a more limited view of the power of Congress is in substance the same argument which was repudiated by this Court in *M'Culloch v. Maryland, supra*.

To quote again from Hamilton, the soundness of whose reasoning upon this subject was fully confirmed by the opinions of Mr. Chief Justice Marshall. Hamilton says, by way of illustration, that among the expedients which might be adopted in appointing the money or thing in which taxes might be paid would be that of "bills issued under the authority of the United States," and he adds:

"Now the manner of issuing these bills is again matter of discretion. The government might doubtless proceed in the following manner:

"It might provide that they should be issued under the direction of certain officers, payable on demand; and, in order to support their credit, and give them a ready circulation, it might, besides giving them a currency in its taxes, set apart, out of any moneys in its treasury, a given sum, and appropriate it, under the direction of those officers, as a fund for answering the bills, as presented for payment.

"The constitutionality of all this would not admit of a question, and yet it would amount to the institution of a bank, with a view to the more convenient collection of taxes. For the simplest and most precise idea of a bank is, a deposit of coin, or other property, as a fund for *circulating* a *credit* upon it, which is to answer the purpose of money. That such an arrangement would be equivalent to the establishment of a bank, would become obvious, if the place where the fund to be set apart was kept should be made a receptacle of the moneys of all other persons who should incline to deposit them there for safe-keeping; and would become still more so, if the officers charged with the direction of the fund were authorized to make discounts at the usual rate of interest, upon good security. To deny the power of the government to add these ingre-

dients to the plan, would be to refine away all government.

"A further process will still more clearly illustrate the point. Suppose, when the species of bank which has been described was about to be instituted, it was to be urged that, in order to secure to it a due degree of confidence, the fund ought not only to be set apart and appropriated generally, but ought to be specifically vested in the officers who were to have the direction of it, and in their *successors* in office, to the end that it might acquire the character of *private property* incapable of being resumed without a violation of the sanctions by which the rights of property are protected, and occasioning more serious and general alarm—the apprehension of which might operate as a check upon the government. Such a proposition might be opposed by arguments against the expediency of it, or the solidity of the reason assigned for it, but it is not conceivable what could be urged against its constitutionality; and yet such a disposition of the thing would amount to the erection of a corporation; for the true definition of a corporation seems to be this: It is a *legal person*, or a person created by act of law, consisting of one or more natural persons authorized to hold property, or a franchise in succession, in a legal, as contradistinguished from natural, capacity" (3 Hamilton's Works, pp. 475-476).

The great powers to lay taxes and to borrow money necessarily involve the use of money for the specified ends, and so long as Congress does not go beyond the provisions for the *use of money for public purposes*, the creation of facilities for the application of money to those ends is clearly within the powers. It is not necessary that the people should be taxed; Congress may provide for borrowing the money. It is not necessary that, in

providing for the borrowing of money, Congress should issue a government obligation payable out of any moneys in the Treasury and constituting a general charge against the Government, any more than it is necessary for Congress directly to build a railroad and hire its employees. Congress, having the power to devote money to the fostering of the primary concern of the country, its food supply, can create a bureau through which the money may be obtained and used under governmental supervision. Congress may provide for the borrowing of money under the direction of government officers and for the issue of a described security payable out of a special fund created in the course of a prescribed activity. The construction of the Constitution is not a matter of such artificiality as to require that Congress must provide for the issue of government bonds constituting a general charge, when it can get the money for the same purpose by providing for the issue of bonds under governmental supervision by an instrumentality of its own creation to be paid out of a designated fund accumulated under its direction. If Congress has the power, and we can see no ground upon which this power can be denied, to issue government bonds and use the moneys in making loans to cultivators of the soil throughout the country in a systematic manner in a way to promote agriculture, then it would be the extreme of nicety, utterly inadmissible in view of the applicable decisions of this Court, to say that the only way that Congress could achieve this object would be to issue government bonds and loan the money directly and that it could not create Federal Land Banks to make loans through co-operative associations and issue bonds against farm mortgages.

The first question is whether the money is to be applied to a public purpose; whether Congress can raise this money by borrowing on government bonds and applying it to that purpose. If this be found to be the case, as we conceive it clearly to be, then we have simply the question of the means employed under the direction of Congress in raising the money for the public purpose. The selection of methods and agencies is in the discretion of Congress, the great *end* being *the use of money for the public purpose*.

In *Osborn v. The Bank*, 9 Wheat. pp. 863, 864, Mr. Chief Justice Marshall gave several illustrations showing the scope of the power of Congress. For example, he said:

"If, instead of the Secretary of the Treasury, a distinct office were to be created for the purpose, filled by a person who should receive, as a compensation for his time, labour, and expense, the profits of the banking business, instead of other emoluments, to be drawn from the treasury, which banking business was essential to the operations of the government, would each State in the Union possess a right to control these operations?"

Will it be said that Congress, having the power to borrow money and to issue government bonds, cannot issue bonds payable only out of a segregated fund?

Will it be said that Congress cannot provide for bonds to be issued by a designated officer of the Government, the bonds to be paid out of a particular fund and the moneys thus raised to be devoted to public purposes?

Could not Congress provide, if it saw fit, for bonds to be issued by a Collector of Customs, to be paid out of customs receipts? Suppose an exi-

gency, in which the public credit was very low and it were necessary in order to float an issue of bonds to segregate funds and issue bonds against them, would not this be within the power of Congress?

Will it be said that Congress cannot provide for the issue of bonds by a *Bureau* of the Government, in the name of the Bureau and to be paid out of a fund created in the course of activities prescribed by Congress? And will it be said that Congress, having this power, cannot create a corporate facility, organized by the Government itself, directed and supervised by its officers, and authorize the issue of bonds through this instrumentality against designated funds, or collateral, in order to raise money to be applied to public purposes?

The theory upon which the power of Congress to create any corporation rests is that Congress may create an instrumentality instead of doing the work directly through government officers or unincorporated governmental departments. As Mr. Chief Justice Marshall said in *M'Culloch v. Maryland*, (4 Wheat. 316, 407-409, 421, 423) :

"A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American con-

stitution, is not only to be inferred from the nature of the instrument, but from the language. * * * * In considering this question, then, we must never forget, that it is a *constitution* we are expounding.

"Although, among the enumerated powers of government, we do not find the word 'bank' or 'incorporation', we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to its government. It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced. But it may with great reason be contended, that a government, entrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be entrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. Throughout this vast republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported. The exigencies of the nation may require that the treasure raised in the north should be transported to the south, *that* raised in the east conveyed to the west, or that this order should be reversed. Is that construction of the constitution to be preferred which would render these operations difficult, hazardous, and expensive? Can we adopt that construction, (unless the words imperiously

require it,) which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impeding their exercise by withholding a choice of means? If, indeed, such be the mandate of the constitution, we have only to obey; but that instrument does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers."

"That a corporation must be considered as a means not less usual, not of higher dignity, not more requiring a particular specification than other means, has been sufficiently proved." * * * * * "But where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This Court disclaims all pretensions to such a power."

Granted that, so far as the use of money is concerned, Congress has power to devote it to the fostering of agricultural development by a general system of loans or credits, and that Congress can provide for the issue of government bonds for this purpose, it would seem to be clear that Congress can create these Federal Land Banks as appropriate instrumentalities.

Embraced within the authority of Congress is the power to regulate the currency (*Osborn v. Bank*, 9 Wheat. p. 873; *Juilliard v. Greenman*, 110 U. S. p. 147). But Congress, for this purpose, does not have to issue government notes; *Congress*

can provide for the issue of notes by a bank which it charters and can protect these notes.

The familiar principle has abundant illustration in connection with the power to regulate interstate commerce. This power embraces the power to foster, protect and preserve. The express power is to "regulate," and it has been clearly set forth that "interstate commerce—if not always, at any rate when the commerce is not transportation—is an act," and that Congress "can do anything which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention or interruption, or to make that act more secure, more reliable or more efficient"; and thus that "Congress may legislate about the agents and instruments of interstate commerce, and about the conditions under which those agents and instruments perform the work of interstate commerce" (*Second Employers Liability Cases*, 223 U. S. 1, 48). But Congress is not limited to the provision of rules governing the acts of *individuals* or of *State corporations* engaged in interstate commerce. Congress may itself create a railroad corporation and in this way control interstate commerce through a creature of its own making and through its rules imposed upon that creature. Thus, in *California v. Pacific R. R. Co.*, 127 U. S. 1, 29, the Court said:

"It cannot at the present day be doubted that Congress, under the power to regulate commerce among the several States, as well as to provide for postal accommodations and military exigencies, had authority to pass these laws. The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from State to State, is essential to the complete

control and regulation of interstate commerce. Without authority in Congress to establish and maintain such highways and bridges, it would be without authority to regulate one of the most important adjuncts of commerce. This power in former times was exerted to a very limited extent, the Cumberland or National road being the most notable instance. Its exertion was but little called for, as commerce was then mostly conducted by water, and many of our statesmen entertained doubts as to the existence of the power to establish ways of communication by land. But since, in consequence of the expansion of the country, the multiplication of its products, and the invention of railroads and locomotion by steam, land transportation has so vastly increased, a sounder consideration of the subject has prevailed and led to the conclusion that Congress has plenary power over the whole subject."

So, as already stated, Congress having the power to regulate or control, may provide instrumentalities of interstate commerce; and, having this power, it is not necessary for Congress directly to build railroads, to be owned and operated by the Government, but there is also embraced the authority to create a corporation to build and operate the railroad. This was all found within the power to "regulate" or make rules for the government of interstate commerce.

In the present case, the power expressly conferred clearly embraces the power to *use money in order to provide for the common defence and general welfare*. It is not a power in Congress to cultivate the soil or to manage agricultural activities within a State, but it is a power in Congress to use money to foster cultivation of the soil and to support these activities in aid of the gen-

eral welfare. So far as the legislation is directed to *the use of money*, and to the provision for the use of facilities for obtaining the money, which Congress can unquestionably obtain directly by an issue of government bonds if it sees fit, it is within the power of Congress—unless we are suddenly to return to a theory of construction heretofore discredited—to create instrumentalities for the raising of the money and for its application to the permitted object.

The conjuring up of bogies to influence the mind as it deals with the broad question of constitutional construction cannot have the slightest effect. For, after all is said and done, the broadest exercise of the power for which we contend merely relates to the use of money for purposes of public importance, a course sanctioned by constant practice since the foundation of the Government. If we were permitted to balance considerations of policy, it would seem to be a far more serious thing to tie the hands of Congress with respect to the use of money in the aid of the general welfare of the people, than it would be to run the risk of ill-advised financial aid. The protection against the latter is found in the judgment of the electorate and in the application of common sense. It is far better, we submit, to rely upon this than to hamstring Congress in the use of money by a narrow and insensible construction, which would permit Congress to issue government bonds and use the money thus obtained for any public purpose, however broadly conceived, and would not permit Congress to create a facility or adapt its measures to the same end in a practicable manner.

Again, we revert to the fact that the measure of the *need* is for Congress to determine in its own judgment. In truth, Congress in the present

instance acted at a time when every stimulus for the food supply was necessary; when, although we were not at war, Europe was convulsed with the most terrible war in history, and when the demand upon our food supply exceeded anything theretofore imaginable. To-day, the greatest problem of our country, in view of the multiplied and intensified attractions of our cities, is to keep the youth upon the soil, to provide farm labor, to secure an adequate supply of farm products and thus to furnish the essential foundation of our entire community life. The need as it exists to-day is an obvious and pressing one, but if the Great War had gone the other way and our resources had been sadly strained by a long continued conflict; if there was here to-day the most serious scarcity of food such as that which has been known in Austria; if there was a widespread famine and our people were threatened with starvation; Congress would still have only the power which it now has to give relief. If Congress cannot now organize financial aid to encourage the production of food, it could not even in such an emergency, for its power would be no greater. Again, if the resources of the Nation had been strained so that public credit was low, and the floating of the Government bonds was extremely difficult, and there was the most serious need of additional fiscal agencies through which money could be obtained and every possible effort was required at once to stimulate the production of food and to replenish the public treasury, and it appeared that a mechanism like that of the Federal Land Banks was an obvious measure designed to attain these ends, still Congress would have only the power that it has now. If Congress can-

not now create these Federal Land Banks, it could not in such a situation as that just described.

The pressure of need does not increase governmental power, but only calls for its exercise. It is for Congress to determine the measure of need, and having determined it, that question is not before this Court. The power, we insist, exists now just the same as it would exist in the most severe crisis, in the light of which no person would be heard to start a doubt.

The Federal Land Banks, not only as they now exist as mere incorporated bureaus of the Government, directed in all their activities by Government officials, but also as they will exist after the Government stock has been retired and after the bonds held by the Treasury have been sold or paid, constitute facilities and instrumentalities for the use of money for a public purpose of great importance; and it was clearly within the authority of Congress, either to appropriate money or to issue Government bonds and apply the proceeds directly through the Treasury Department to the end in view, or to create these facilities and instrumentalities as appropriate means to the same end.

SECOND: Congress has the power to judge for itself what fiscal agencies the Government needs and its decision of that question is not open to judicial review. Congress may create in its discretion, as in this instance it has created, moneyed institutions to serve as fiscal agents of the Government and also to provide a market, as stated in the Act, for United States bonds.

The Federal Land Banks start with the Government virtually as the sole stockholder and in fact as the sole manager. As the Federal Land Banks go on, the coöperative associations, composed of the borrowers and through which the loans are made, take stock in the Federal Land Banks to the extent of five per cent of the loans and this stock is retired as the loans to which the investments are tributary are paid off. This issue of stock is merely a way of securing to the borrower a share in any profit as against his loan. The Government, so long as the Treasury holds farm loan bonds, continues its actual direction and management, having not only the Farm Loan Board, but the directors of each Federal Land Bank as Government appointees. When, in the future, the Treasury no longer holds bonds of a Federal land bank purchased under the amendment of 1918, and six of the directors are selected by the Cooperative Loan Associations as provided in the Act (Sec. 4), three of the directors still being Federal employees (*id.*) and the Federal Farm Loan Board still retaining its supervision (Sec. 17), not only would the Federal Land Banks continue to perform the governmental function to which we have already referred, but these banks will continue to be, as they have been from the outset, fiscal agents of the Government.

Thus, the Federal Land Banks, starting as a governmental institution, *never lose that quality. Their main purpose throughout is to serve as instrumentalities of the Government.*

The power of Congress to establish banks, as appropriate facilities to aid in the fiscal operations of the Federal government is beyond controversy (*M'Culloch v. Maryland, supra*; *Osborn v. Bank of the United States, supra*; *First National Bank v. Trust Company*, 244 U. S. 416). The fact that a banking institution established by the Federal government may largely be engaged in private transactions incident to the banking business, that is, in receiving deposits from individuals, firms, and private corporations, and in making ordinary loans and discounts, through which it may derive the gains which justify it as a business enterprise, does not militate against the authority of Congress to incorporate it as a Federal agency, in view of the fact that the nature of its business is such as to qualify it for service in the financial transactions of the Government. We have already quoted much that was said in relation to this subject in *M'Culloch v. Maryland, supra*. We may add the following from the same opinion (pp. 409, 422-424):

"It is not denied, that the powers given to the government imply the ordinary means of execution. That, for example, of raising revenue, and applying it to national purposes, is admitted to imply the power of conveying money from place to place, as the exigencies of the nation may require, and of employing the usual means of conveyance. * * *

"If a corporation may be employed indiscriminately with other means to carry into execution the powers of the government, no particular reason can be assigned for exclud-

ing the use of a bank, if required for its fiscal operations. To use one, must be within the discretion of Congress, if it be an appropriate mode of executing the powers of government. That it is a convenient, a useful, and essential instrument in the prosecution of its fiscal operations, is not now a subject of controversy. All those who have been concerned in the administration of our finances, have concurred in representing its importance and necessity; and so strongly have they been felt, that statesmen of the first class, whose previous opinions against it had been confirmed by every circumstance which can fix the human judgment, have yielded those opinions to the exigencies of the nation. Under the confederation, Congress, justifying the measure by its necessity, transcended perhaps its powers to obtain the advantage of a bank; and our own legislation attests the universal conviction of the utility of this measure. The time has passed away when it can be necessary to enter into any discussion in order to prove the importance of this instrument, as a means to effect the legitimate objects of the government.

“But, were its necessity less apparent, none can deny its being an appropriate measure; and if it is, the degree of its necessity, as has been very justly observed, is to be discussed in another place. * * *

“After the most deliberate consideration, it is the unanimous and decided opinion of this Court, that the act to incorporate the Bank of the United States is a law made in pursuance of the constitution, and is a part of the supreme law of the land.”

(See, also, Hamilton’s Opinion as to the Constitutionality of the Bank of the United States, February 23, 1791, 3 Hamilton’s Works, 445; Story on the Constitution, secs. 1259-1271.)

See, also, *Osborn v. Bank*, 9 Wheat. 738.

In *Farmers & Mechanics National Bank v. Dearing*, 91 U. S. 29, 33, 34, the validity of the present national banking system was sustained upon the same principle.

"The constitutionality of the act of 1864 is not questioned. It rests on the same principle as the act creating the second bank of the United States. The reasoning of Secretary Hamilton and of this court in *McCulloch v. Maryland* (4 Wheat. 316) and in *Osborne v. The Bank of the United States* (9 id. 708), therefore, applies. The national banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of the necessity which existed for creating them Congress is the sole judge."

See also *Mercantile Bank v. New York*, 121 U. S. 138, 154.

Davis v. Elmira Savings Bank, 161 U. S. 275, 283.

Easton v. Iowa, 188 U. S. 220, 229.

It must therefore be taken to be established that Congress is not limited with respect to the creation of fiscal agents of the United States, and that, it may create these agencies as it sees fit without affording ground for judicial objection. It is not within the province of the Court to say that Congress creates more agencies than it needs, or that it should prefer one sort of agent to another if the agency it creates is adapted to aid the Government in its fiscal operations in any manner.

The Federal Land Banks as Fiscal Agents of the United States.

The Act in question expressly states as one of its objects

“to create Government depositaries and financial agents for the United States”.

The argument of appellant’s counsel seems to proceed on the assumption that this Court may ignore the explicit provision of the Act that the Federal Land Banks, established by the Government itself and equipped as moneyed institutions to serve as fiscal agents for the Government, should not be regarded as such fiscal agents and that Congress should be denied the power to create them as such.

The Act says that these Federal Land Banks, organized by the Government itself,

“shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary” (Sec. 6).

Appellant’s counsel says in substance that there are a great many institutions that may serve, and do serve, as depositaries of public funds. But it is not for the Court to say how many there shall be or how they shall be established. This is the prerogative of Congress. If Congress prefers to create institutions of its own which may be depositaries of public money, upon what principle can its competency to do this be denied?

In the present case the Federal Land Banks are organized by the Government, directed by the Government, and perform functions which Congress deems to be of vast importance. Certainly, they are moneyed institutions and as such are fit to act as depositaries of public money. Congress thus has institutions of its own creation; its own creatures, subject to the most complete control, to serve as depositaries. Can it possibly be said that there is no power on the part of Congress to provide in this manner for depositaries? Suppose Congress saw fit to withdraw a great part of its deposits from other institutions and to put the public moneys in a particular class of institutions, created by itself and equipped to act as depositaries, would not Congress have the power to carry out this plan and is it for the Court to say to what extent deposits of public money shall be made in this way?

Again, the Act says that these Land Banks
“may also be employed as financial agents of
the Government” (Sec. 6).

So far as the Federal Land Banks are concerned, they are organized by the Government directly, the Government having at the start the only interest and control; and created in this way *they are agents* and however their mortgage loan business may develop *they always remain “financial agents of the Government.”*

But, appellant’s counsel argue that the provision is permissive, that the provision is that they “*may also be employed*” as financial agents of the Government. This would not be sufficient, as it seems to us, to justify overriding the power of Congress to create these agencies. But the argument loses sight of the next clause, which is

"and they *shall* perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them."

This is mandatory. In other words, Congress provides that Government officers shall establish by Government funds and with Government control a moneyed institution which begins as, and always will be, a financial agent of the Government and *must* serve the Government at any time in the performance of such duties as the Government may reasonably require.

Appellant's counsel speaks of pretext. But is anything more clear than that this Court cannot ascribe to Congress a pretext, or assert that its action is a pretence, when Congress is exercising its lawful power? (*McCray v. United States*, *supra*). Congress has the right to establish fiscal agencies, to create financial agents. Is its power to be denied to create a moneyed corporation, to act as a financial agent—a corporation like these Federal Land Banks organized by the Government itself?

The record in this case shows that instead of being a pretext these Federal Land Banks within a short time after their organization were utilized for a most important service as financial agents of the Government. When, in the course of the War it was necessary to make seed grain loans to farmers in drought-stricken sections, three of the Federal Land Banks were called upon to act for this purpose and made 15,000 loans of this character, serving without compensation. The bill of complaint sets forth (Transcript, p. 10):

"During the summer of 1918, the Federal Land Banks at Wichita, St. Paul and Spokane

were designated as financial agents of the Government for the making of seed grain loans to farmers in drought-stricken sections, the President having at the request of the Secretary of Agriculture set aside \$5,000,000 for that purpose out of his \$100,000,000 war funds. The three banks mentioned have made upwards of 15,000 loans of said character aggregating in all the sum of upwards of \$4,500,000, and are now engaged in collecting said loans, all of which were secured by crop liens. The said banks acted in said matter without compensation under the provisions of a joint circular of the Treasury Department and the Department of Agriculture allowing the actual expenses of the several Federal Land Banks, but no compensation."

The Federal Land Banks are not the less *banks* because their banking powers are limited. A bank is a moneyed institution which establishes a basis for credit. It receives, transmits and pays out money and thus is equipped to act as a fiscal agent for the Government. The circumstance that credit is extended upon farm lands as security, does not make the land bank any the less a bank, that is, a moneyed institution which renders fiscal services. In *Osborn v. The Bank*, 9 Wheat. 738, the Court said, pp. 860-862:

"The whole opinion of the Court, in the case of *M'Culloch v. The State of Maryland*, is founded on, and sustained by, the idea that the Bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the government of the United States.' It is not an instrument which the government found ready made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only.

It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the government are effected, it is also trading with individuals for its own advantage. The appellants endeavour to distinguish between this trade and its agency for the public, between its banking operations and those qualities which it possesses in common with every corporation, such as individuality, immortality, &c. While they seem to admit the right to preserve this corporate existence, they deny the right to protect it in its trade and business.

"Why is it that Congress can incorporate or create a Bank? This question was answered in the case of *M'Culloch v. The State of Maryland*. It is an instrument which is 'necessary and proper' for carrying on the fiscal operations of government. Can this instrument, on any rational calculation, effect its object, unless it be endowed with that faculty of lending and dealing in money, which is conferred by its charter? If it can, if it be as competent to the purposes of government without, as with this faculty, there will be much difficulty in sustaining that essential part of the charter. If it cannot, then this faculty is necessary to the legitimate operations of government, and was constitutionally and rightfully engrafted on the institution. It is, in that view of the subject, the vital part of the corporation; it is its soul; and the right to preserve it originates in the same principle, with the right to preserve the skeleton or body which it animates. The distinction between destroying what is denominated the corporate franchise, and destroying its vivifying principle, is precisely as incapable of being maintained, as a distinction between the right to sentence a human being to death, and a right to sentence him to a total

privation of sustenance during life. Deprive a bank of its trade and business, which is its sustenance, and its immortality, if it have that property, will be a very useless attribute."

In the *Legal Tender Cases*, 12 Wall. 457, 537, 538, the Court said:

"Under the power to regulate commerce, provision has been made by law for the improvement of harbors, the establishment of observatories, the erection of lighthouses, breakwaters, and buoys, the registry, enrolment, and construction of ships, and a code has been enacted for the government of seamen. Under the same power and other powers over the revenue and the currency of the country, for the convenience of the treasury and internal commerce, a corporation known as the United States Bank was early created. To its capital the government subscribed one-fifth of its stock. But the corporation was a private one, doing business for its own profit. Its incorporation was a constitutional exercise of congressional power for no other reason than that it was deemed to be a convenient instrument or means for accomplishing one or more of the ends for which the government was established, or, in the language of the first article, already quoted, 'necessary and proper' for carrying into execution some or all the powers vested in the government. Clearly this necessity, if any existed, was not a direct and obvious one. Yet this court, in *McCulloch v. Maryland*, unanimously ruled that in authorizing the bank, Congress had not transcended its powers. * * *

"This is enough to show how, from the earliest period of our existence as a nation, the powers conferred by the Constitution have been construed by Congress and by this court whenever such action by Congress has been

called in question. Happily the true meaning of the clause authorizing the enactment of all laws necessary and proper for carrying into execution the express powers conferred upon Congress, and all other powers vested in the government of the United States, or in any of its departments or officers, has long since been settled.

"In *Fisher v. Blight*, this court, speaking by Chief Justice Marshall, said that in construing it 'it would be incorrect and would produce endless difficulties if the opinion should be maintained that no law was authorized which was not indispensably necessary to give effect to a specified power. Where various systems might be adopted for that purpose it might be said with respect to each that it was not necessary because the end might be obtained by other means.' "

And with respect to the validity of the National Banking Act, see *Farmers and Mechanics National Bank v. Dearing*, 91 U. S. 29.

In a general way, the facilities furnished by national banks may be described as those relating

(1) *To the receipt, transmission and disbursement of the public money.* (See *M'Culloch v. Maryland*, 4 Wheat., pp. 407, 408, 409.) It was said of the old Bank of the United States: "It is an immense machine, economically and beneficially applied to the fiscal transactions of the nation. * * * it is now become the functionary that collects, the depository that holds, the vehicle that transports, the guard that protects, and the agent that distributes and pays away, the millions that pass annually through the national treasury." (Mr. Justice Johnson, in *Osborn v. The Bank*, 9 Wheat., p. 872.)

(2) To the exercise of *the borrowing power*. "A bank has a direct relation to the power of borrowing money, because it is a usual, and in sudden emergencies an essential, instrument in the obtaining of loans to government.

"A nation is threatened with war; large sums are wanted on a sudden to make the necessary preparations. Taxes are laid for the purpose, but it requires time to obtain the benefit of them. Anticipation is indispensable. If there be a bank the supply can at once be had. If there be none, loans from individuals must be sought. The progress of these is often too slow for the exigency; in some situations they are not practicable at all. Frequently, when they are, it is of great consequence to be able to anticipate the product of them by advance from a bank. * * * The legislative power of borrowing money, and of making all laws necessary and proper for carrying into execution that power, seems obviously competent to the appointment of the *organ*, through which the abilities and wills of individuals may be most efficaciously exerted for the accommodation of the government by loans." (Hamilton, Opinion as to the Constitutionality of the Bank of the United States, February 23, 1791, 3 Hamilton's Works, pp. 477-479.)

(3) To the exercise of the power *to regulate the currency of the country* through the issue, under appropriate regulations, of national bank notes which pass from hand to hand as currency. (*Osborn v. The Bank*, 9 Wheat., pp. 864, 873; *Juilliard v. Greenman*, 110 U. S. p. 445; *Veazie Bank v. Fenno*, 8 Wall. p. 549.)

The recognized power with respect to the currency, as already noted, is a striking illustration

of the scope of Federal authority. While Congress has the power to provide for the issue of notes by the Government, it is not necessary that the Government should issue the notes, but Congress may provide for the creation of corporations and that these corporations may issue notes which will circulate as currency. That is, Congress can organize corporate facilities to do that which it may authorize the Government to do directly.

Moreover, the recognition of the power to make provision for currency which may pass from hand to hand, through bank notes, is merely a recognition of the needs of exchange and of the fundamental requirements of *credit*. To provide for a combination of financial resources in order to afford credit facilities which are needed to give stability to enterprise and thus to maintain the public credit, is a necessary feature of the money power which must reside in Government and in this country must reside, and does reside, in the Federal Government. The experience of foreign countries with respect to agricultural credits, instead of detracting from the force of the argument in support of the Federal Farm Loan Act, greatly strengthens it, for that experience demonstrates the national need, and as this national need relates to the *use of money*, and the extension of *financial credit*, it is a need which can be met in this country by the exercise of national power which extends to the *financial operations* which are essential to maintain national stability and make it possible through credit and currency facilities to conduct the operations both of production and trade.

The limitation of banking powers, so far as commercial banking is concerned, in no way unfits the Federal Land Banks for operations as

fiscal agents of the Government. The Federal Land Banks are both credit instrumentalities and facilities for receipt, transmission and payment of money. They are institutions organized by the Government to deal in money and thus are appropriate means for the conduct of transactions relating to the public money. As banking organizations, they have the qualifications to render service as depositaries and financial agents. In this aspect, it cannot be considered as a determining feature that these banks are to make loans to cultivators of the soil on farm security, and not to merchants on commercial paper; or that they are not to accept deposits payable upon demand except from their own stockholders. The Federal Land Banks may borrow money, give security therefor, and pay interest thereon; they may receive deposits from their stockholders, payable upon demand; they may deposit their securities and their current funds subject to check with any member bank of the Federal Reserve System and receive interest; they must hold at least twenty-five per cent. of the capital for which stock is outstanding in the name of national farm loan associations in quick assets, consisting of cash in their own vaults, or in deposits in member banks of the Federal Reserve System, or in readily marketable securities approved under the rules of the Federal Farm Loan Board; their farm loan bonds are a lawful investment for all fiduciary and trust funds (subject to the laws of the several States), and may be accepted as security for all public deposits. In short, the Federal Land Banks will be constantly, in the course of their authorized business, receiving and disbursing money and will thus have facilities available for governmental transactions.

We repeat that it is not a question for the courts whether the Government has need of these additional facilities. It is hardly necessary to point out the vast service rendered by the Federal Reserve System in the recent crisis. The discretion of Congress cannot be overridden. It is a matter for Congress to decide if the facilities are of the kind which the Federal Government may properly use in the performance of its functions.

The Federal Land Banks as Facilities to Aid in Furnishing a Market for United States Bonds.

This is a stated purpose of the Act, and the provisions of the Act are aptly framed to accomplish it.

It is not a question whether or not the Government could get along without this aid for the marketing of United States bonds. The question here is precisely the same as though it was perfectly apparent to everyone that the aid furnished by these Federal Land Banks was *absolutely indispensable*. For the power of Congress is exactly the same and the question whether the power should be exercised is not for the Court but for Congress exclusively. The question here is whether these moneyed institutions do aid in providing a market for United States bonds. If they do, upon what ground can it be said that Congress could not create them?

It is required that not less than five per cent of the capital of the Federal Land Banks for which stock is outstanding in the name of national farm loan associations shall be invested in United States bonds (sec. 5). Moreover, these coöperative associations have power

"Fourth. To issue certificates against deposits of current funds bearing interest for not longer than one year at not to exceed four percentum per annum after six days from date, convertible into farm loan bonds when presented at the Federal Land Bank of the district in the amount of \$25 or any multiple thereof" (sec. 11).

The Federal Land Banks are empowered

"Seventh. To borrow money, to give security therefor, and to pay interest thereon.

"Eighth. To buy and sell United States bonds" (sec. 13).

The important opportunity thus afforded for getting at the resources of the country through coöperative associations, in order to aid in furnishing a market for United States bonds is perfectly obvious. If our War had continued for five or six years every resource of this kind might have been absolutely required. So important did this feature of the Act appear to be that Senator Lodge presented a statement with respect to "Government Savings-Bank Features of the Hollis Bill," in which he said (Cong. Rec., 64th Cong., 1st Sess., Vol. 53, Pt. 7, p. 7128) :

"In view of these clauses, the Federal Land Banks would be government banks for savings and deposits, while their entire resources may be used in financing government projects instead of in farm mortgaging."

Who shall say that Congress could not entertain and carry out this purpose?

It should be noted that there are 4,000 of these coöperative farm loan associations which have been chartered by the Government and 2,000 of these associations have begun the creation of re-

serves. The significance of this in respect to the marketing of United States bonds requires no further comment.

Further, *amortization and other payments* on the principal of mortgage loans may be used for the purpose of United States Government bonds. The Farm Loan bonds which the Federal Land Banks are authorized to issue may be secured by United States Government bonds and later may be substituted for such securities for mortgages withdrawn from the Farm Loan Registrar (sec. 22).

It thus appears that these Federal Land Banks organized by the Government have a *very real and direct relation* not only to the performance of duties as fiscal agents of the Government but to the supplying of a market for United States bonds, and we submit that this office of these banks cannot be ignored.

Summary.

We therefore conclude that the Federal Land Banks are lawfully created agencies of the United States, in that

- (a) They are the means for the application of public moneys for a proper purpose;
- (b) They are facilities organized for the purpose of supplying financial aid through credits, on a general plan, which it is competent for the Government directly to supply and to organize instrumentalities to supply;

- (c) They are constituted fiscal agents of the Government and are bound to perform all reasonable duties imposed upon them as such agents;
- (d) They aid in the exercise of the borrowing power by the provision for investment and dealing in United States bonds.

Each one of these purposes would be sufficient to sustain the Act.

The Federal Land Banks from their inception to their winding up are nothing but Federal instrumentalities whose main purpose it is to perform a governmental function.

THIRD: Congress may protect the securities created under its legislation from impairment or destruction, by making them exempt from taxation.

The question of the validity of the tax exemption feature of the Act is not an independent one. This question turns upon the validity of the provisions of the Act for the creation of the Federal Land Banks and for the issue of the Farm Loan Bonds. It cannot be doubted that Congress can protect its corporations validly created, and the securities validly issued by such corporations under its authority, from tax levies.

The Farm Loan bonds which have been issued by the Federal Land Banks have been issued directly on the initiative and under the control of Federal officers, acting under the Act of Congress in directing and supervising the affairs of these banks organized by the Government. These Farm Loan bonds are securities created pursuant to the legislation of Congress. And, at any time in the future, when these Federal Land Banks issue Farm Loan bonds, these securities will be issued by corporations serving as Federal agencies, and will be created under the direct authority of Congress.

The reason that Congress may protect such instrumentalities and securities from taxation is that this protection is essential to provide against their impairment or destruction. Such protection in no way impairs the authority of the States. The States may still manage their own concerns, but the protection is necessary to maintain the authority of the Nation and the instrumentalities and securities for which it provides. What was said by Mr. Chief Justice Marshall upon this

point in *M'Culloch v. Maryland*, *supra* (4 Wheat. pp. 432, 433) is controlling:

"If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States.

"Gentlemen say, they do not claim the right to extend State taxation to these objects. They limit their pretensions to property. But on what principle is this distinction made? Those who make it have furnished no reason for it, and the principle for which they contend denies it. They contend that the power of taxation has no other limit than is found in the 10th section of the 1st article of the constitution; that, with respect to every thing else, the power of the States is supreme, and admits of no control. If this be true, the distinction between property and other subjects to which the power of taxation is applicable, is merely arbitrary, and can never be sustained. This is not all. If the controlling power of the States be established; if their supremacy as to taxation be acknowledged; what is to restrain their exercising this control in any shape they may please to give it? Their sovereignty is not confined to taxation. That is not the only mode in which it might be displayed. The question is, in truth, a question of supremacy; and if the right of the States to tax the means employed by the general government be conceded, the declaration that the constitution,

and the laws made in pursuance thereof, shall be the supreme law of the land, is empty and unmeaning declamation."

And the argument was reinforced in *Osborn v. The Bank*, 9 Wheat. 962, where Mr. Chief Justice Marshall said:

"To tax its faculties, its trade, and occupation, is to tax the Bank itself! To destroy or preserve the one, is to destroy or preserve the other."

Upon the same principle, it was held in *Weston v. City Council of Charleston*, 2 Pet., 449, that the stock (that is, the bonds) of the United States could not be taxed by the States. The tax was found to be "a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the Constitution" (See also *Bank of Commerce v. New York City*, 2 Black, 620).

A similar ruling was made in *Bank v. Supervisors*, 7 Wall., 26, as to United States notes issued under the Loan and Currency Acts of 1862 and 1863. There, it was insisted that the notes were issued as money, and as this was their controlling quality, they were subject to taxation like coin issued under the same authority. In such a case it was recognized that Congress would have a discretion to determine whether State taxation of such a subject would injuriously affect the functions of the Federal Government. Mr. Chief Justice Chase said (pp. 30-31):

"It cannot be said, as we have already intimated, that the same inconveniences as would arise from the taxation of bonds and other interest-bearing obligations of the government, would attend the taxation of notes

issued for circulation as money. But we cannot say that no embarrassment would arise from such taxation. And we think it clearly within the discretion of Congress to determine whether, in view of all the circumstances attending the issue of the notes, their usefulness, as a means of carrying on the government, would be enhanced by exemption from taxation; and within the constitutional power of Congress, having resolved the question of usefulness affirmatively, to provide by law for such exemption.

"There remains, then, only this question, Has Congress exercised the power of exemption?

"A careful examination of the acts under which they were issued, has left no doubt in our minds upon that point."

In *Thomson v. Pacific Railroad*, 9 Wall., 579, the question arose whether the *property* of the railway company, a *State corporation*, which was "entitled to certain benefits, and subject to certain duties under the legislation of Congress" was subject to a State tax. The Court held that it was. The Court thought there was "a clear distinction between the *means* employed by the government and the *property* of agents employed by the government," saying (p. 591): "Taxation of the agency is taxation of the means; taxation of the *property* of the agent is not always, or generally, taxation of the means." (See, to the same effect, *National Bank v. Commonwealth*, 9 Wall., 353, 362.) And in the *Thomson* case, it was deemed "safe to conclude, in general, in reference to persons and *State corporations* employed in government service, that when Congress has not interposed to protect their *property* from State taxation, such taxation is not obnoxious to that objection" (*id.*, p. 591).

In *Railroad Company v. Peniston*, 18 Wall., 5, a tax by the State upon the real and personal property (as distinguished from its franchises) of the Union Pacific Railroad Company, a Federal corporation, was upheld. Mr. Justice Strong, with whom three Judges concurred, said (p. 36):

"It is, therefore, manifest that exemption of Federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers."

Mr. Justice Swayne, concurring in the judgment (pp. 37, 38), thought that there was "no reason to doubt that it was the intention of Congress *not* to give the exemption claimed," adding:

"But I hold that the road is a National instrumentality of such a character that Congress may interpose and protect it from State taxation whenever that body shall deem it proper to do so. For some of the leading authorities in support of the principle involved in this view of the subject I refer to the *Chicago and Northwestern Railway v. Fuller* (17 Wall., 560), decided by this Court a short time ago."

(See also *California v. Pacific R. R. Co.*, 127 U. S., 1, 41.)

Adopting the same view, it was said by Mr. Justice Brewer, in delivering the opinion of the Court in *Reagan v. Mercantile Trust Co.*, 154 U. S., 413, 416, 417, as to the Texas and Pacific Railway, a Federal corporation, that "conceding to Congress the power to remove the corporation in all its operations from the control of the State, there is in the act creating this company nothing which indicates an intent on the part of Congress to so remove it," and it was concluded that the corporation was "as to business done wholly within the State, subject to the control of the State in all matters of taxation, rates, and other police regulations."

The result of the decisions was thus stated in *Central Pacific Railroad Co. v. California*, 162 U. S., 91, 125:

"It may be regarded as firmly settled that although corporations may be agents of the United States, their property is not the property of the United States, but the property of the agents, and that a State may tax the property of the agents, subject to the limitations pointed out in *Railroad Co. v. Peniston*, *Van Brocklin v. Tennessee*, 117 U. S., 151, 177.

"Of course, if Congress should think it necessary for the protection of the United States to declare such property exempted, that would present a different question. Congress did not see fit to do so here, and unless we are prepared to overrule a long line of well considered decisions the case comes within the rule therein laid down." (Italics ours.)

With respect to national banks, it has been held that their personal assets are exempt from State taxation. In *Rosenblatt v. Johnston*, 104 U. S., 462, this conclusion was reached with respect to

the personal property of an insolvent national bank which was in the hands of a receiver appointed by the Comptroller of the Currency under section 5234 of the Revised Statutes. The decision was placed upon the ground that the property in legal contemplation still belonged to the bank; that if the shares had any value they were taxable in the hands of the holders, under section 5219 of the Revised Statutes, but that the property in the hands of the receiver was "exempt to the same extent as it was before his appointment."

By reason of the policy and purpose of the National Bank Act it was said in *Mercantile Bank v. New York*, 121 U. S., 138, 154, that "neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, being exempted from the power of the States in this respect, because these banks were means and agencies established by Congress in execution of the powers of the government of the United States." It was added that it "was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the authority to tax them within the limits of a rule prescribed by law." And in *Talbott v. Silver Bow County*, 139 U. S., 438, 440, it was said: "That shares of stock in a national bank are not subject to taxation without the consent of Congress is conceded." (See *People v. Weaver*, 100 U. S., 539, 543; *Davis v. Elmira Savings Bank*, 161 U. S., 275, 283.)

As to national bank notes, Congress expressly provided by the act passed in 1894 (28 Stat., 278, c. 281) that the "circulating notes of national banking associations and United States legal ten-

der notes and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency and gold, silver or other coin," should be "subject to taxation as money on hand or on deposit under the laws of any State or Territory."

In *Owensboro National Bank v. Owensboro*, 173 U. S., 664, a suit brought to restrain the collection of alleged "franchise" taxes under an act of Kentucky, the Court said (through Mr. Justice White)—after referring to the principles established by the previous decisions (pp. 668, 669):

"It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, *were it not for the permissive legislation of Congress.*

"Doubtless the far-reaching consequence to arise from depriving the states of the source of revenue which would spring from the taxation of such banks, and the error of not conferring the power to tax, early impressed itself upon Congress; for the following year, act of June 3, 1864, c. 106, 13 Stat., 99, power was granted to the States, not to tax the banks, their franchises or property, but to tax the shares of stock in the names of the shareholders.

"This section, then, of the Revised Statutes, *is the measure of the power of the State to tax national banks, their property or their franchises.* By its unambiguous provisions the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. Any state tax therefore which is in excess of and not in conformity to these requirements is void." (Italics ours.)

(See also *First National Bank v. Albright*, 208 U. S., 548, 552, 553.)

In *Clement National Bank v. Vermont*, 231 U. S., 120, 135, it was held that with respect to the taxation of *depositors' credits*, the Federal statute does not prescribe a rule, and the property being normally subject to the State's taxing power, there was no warrant for implying a restriction which would extend beyond the requirements of protection from the prejudicial effect of such exactions as would be unjustly discriminatory.

The rule with respect to the taxation of Federal instrumentalities has had recent application in *Farmers etc. Bank v. Minnesota*, 232 U. S., 516, holding that a State may not tax bonds issued by a municipality of a territory, as such a tax was one upon the operations of the Government and not in any sense a tax upon the property of the municipality; and that "to tax the bonds as property in the hands of the holders is, in the last analysis, to impose a tax upon the right of the municipality to issue them." (*id.*, p. 526.) And in *Choctaw & Gulf R. R. Co. v. Harrison*, 235 U. S., 292, a tax upon the gross sales of coal from mines which the railroad company had leased from Indians, was held to be invalid, as it was a tax upon an instrumentality through which the United States was performing its duty to the Indians. (See also *Indian Territory Oil Co. v. Oklahoma*, 240 U. S., 522; *Bank of California v. Richardson*, 248 U. S., 476.)

In the present case, Congress has provided explicitly that "every Federal Land Bank and every National Farm Loan Association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from

Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act."

It is also provided that "*first mortgages*" executed to the Federal Land Bank, and "*farm loan bonds*" issued under the provisions of this Act, *shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.*"

In view of these provisions, it is not necessary to discuss the question whether, or in what cases, there must be an explicit declaration by Congress in order to create an exemption from State taxation, either of the property held by Federal corporations, or of the shares or obligations issued by them. (See *Bank v. Supervisors*, 7 Wall., 26; *Thomson v. Pacific Railroad*, 9 Wall., p. 591; *Railroad Co. v. Peniston*, 18 Wall., pp. 37, 38; *Reagan v. Mercantile Trust Co.*, 154 U. S., pp. 416, 417.) Nor is it essential to consider to what extent action by Congress may be held, as it has been said, to permit State taxation. (See *Mercantile Bank v. New York*, 121 U. S., p. 154; *Owensboro National Bank v. Owensboro*, 173 U. S., 664.) Here, the exemption is given expressly.

If the subject of the exemptions is deemed to be so intimately and unquestionably related to the operations of the Federal agency as to be inherently exempt, the action of Congress is merely declaratory. And, if the case is one in which Congress can be said to have discretion, certainly Congress has exercised it. From every point of

view, the exemption is a valid one. Congress has complete power to protect the Federal Land Banks as Federal corporations, and the Farm Loan Bonds as securities issued by these corporations under the authority of Congress, from State taxation.

With respect to the exemption of the Farm Loan Bonds issued by the Federal Land Banks from Federal taxation, it is sufficient to say that Congress pledges this immunity and to the extent that these bonds are accepted and paid for in reliance upon this stipulation it would be a gross violation of faith to repudiate it. Further, this provision of the Act accepted by the taking and paying for the bonds, constitutes an agreement supported by consideration which would be valid and binding. In view of the broad authority of Congress in matters of taxation, it is submitted that Congress has ample power to make this provision for exemption—a power similar to that which has been recognized as belonging to the States. (See *Home of the Friendless v. Rouse*, 8 Wall., 430; *Farrington v. Tennessee*, 95 U. S., 679.)

As was said by the Supreme Court of the United States in the *Sinking Fund Cases*, 99 U. S., 700, 718, 719: "The United States cannot any more than a State interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. . . . The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong

and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen." So, referring to legislation with respect to certain railroads, the Supreme Court said in *United States v. Central Pacific R. R. Co.*, 118 U. S., 235, 238: "These sections" (referring to the applicable Act of Congress) "taken together, constitute the contract between the United States and the appellee. . . . This contract is binding on the United States, and they cannot, without the consent of the company, change its terms by any subsequent legislation. *Sinking Fund Cases, ubi supra.*"

Relying upon the immunity from taxation expressly conferred by Congress, and the validity of the securities, investors have purchased the Farm Loan Bonds issued by the Federal Land Banks under the direction of the Federal Farm Loan Board to the extent of over \$150,000,000. The appellant assails these existing securities. The attack cannot be sustained by doubts, for mere doubts must be resolved in favor of the validity of Congressional action. It is incumbent in a challenge of this most serious character for the appellant to establish its contention by reasoning so conclusive as to admit of no reply. Instead of sustaining this burden, the argument for the appellant runs counter to principles that have been established since the days of Marshall and to a weight of opinion in and out of Congress which is sufficiently indicated by the fact that three and a half years have elapsed since the passage of the Act, that Congress, in pursuance of its pledge, has repeatedly in Income Tax Acts exempted the Farm Loan Bonds, and that the States

throughout the country have recognized the exemption from local taxation.

The decree of the District Court dismissing the bill should be affirmed.

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